

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 571 OF 2022
WITH
INTERIM APPLICATION NO. 759 OF 2021
IN
SECOND APPEAL NO. 571 OF 2022**

Mahendra Dattajirao ShindeAppellant/Applicant
Vs.

The State of Maharashtra Thr.
The Collector, SataraRespondent

Mr. Nikhil Wadikar a/w Aniket Gole i/b Nandu Vishnu Pawar for the
Appellant/Applicant.

Mr. Pankaj Deokar, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 28th JUNE 2024

ORDER :

1. This second appeal challenges the concurrent judgments and decrees dismissing the appellant's suit for possession based on title.
2. Learned counsel for the appellant submits that though, it was admitted by the defendants that the suit property was directed to be handed over to the appellant under the tenancy proceedings, both the Courts have erred in dismissing the suit. He relies upon the findings

recorded by the trial Court in paragraph no.9, to support his submission that defendant admitted that under the tenancy proceedings, the suit property was directed to be handed over to the plaintiff. He thus, submits that there is an error committed by both the Courts in not correctly appreciating the pleadings and evidence on record.

3. I have considered the submissions made on behalf of the appellant. Perused the papers.

4. The suit is filed based on plaintiff's title for possession of Gat No.1511, which is part of the original Survey No. 362. The trial Court in paragraph no.9 has clearly recorded the facts with regard to the division of Survey No.362.

5. The trial Court has clearly recorded that, it was not in dispute that original Survey No.362 was divided into two parts and 362/2 was given Gat No.1511 and recorded in the name of defendants' predecessor, who was admittedly the tenant of the land. The second part of Survey No.362 was numbered as Survey No.362/1, which was given Gat No.1512 and recorded in the name of appellant's

predecessor.

6. Both the Courts after examining and appreciating the oral as well as documentary evidence on record, has disbelieved the case of the plaintiff regarding ownership of the suit property i.e., Gat No. 1511. It is also not in dispute that the defendant's predecessor was protected tenant and there were orders passed under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 and certificate under Section 34-M was also issued pursuant to the orders passed under Section 32-G.

7. Admittedly, the orders passed under the Tenancy Act are not challenged by the appellant.

8. The submissions made on behalf of the appellant regarding misappreciation of the evidence does not require any consideration by this Court, in view of the clear findings of facts recorded by both the Courts. Once it is not in dispute that after division of original Survey No. 362, the suit property was allotted to defendants, I do not find that any further examination on facts is required.

9. Admittedly, the defendant's predecessor was tenant in respect of

the suit property and the orders under the Tenancy Act, in favour of the defendants are not under challenge.

10. There are clear findings of fact recorded by the trial Court, disbelieving the plaintiffs' case of ownership on the suit property. After re-examining the evidence and facts, the appeal Court has confirmed the findings recorded by the trial Court.

11. The second appeal does not raise any substantial question of law. Hence, Second Appeal is dismissed.

12. In view of dismissal of the second appeal, Interim Application No. 759 of 2021 is dismissed as infructuous.

MANGALTAI
JAYWANT
JADHAV
Digitally
signed by
MANGALTAI
JAYWANT
JADHAV
Date:
2024.07.31
17:03:02
+0530

[GAURI GODSE, J.]