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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 678 OF 2015
WITH
CIVIL APPLICATION NO. 1435 OF 2015
IN
SECOND APPEAL NO. 678 OF 2015**

Shamrao Krishna Patil
(Decd. Through Legal Heirs)

.....Appellants

Vs.

Prakash Sadashiv Lambe and Ors

.....Respondents

Mr. Shrishailya S. Desshmukh for the appellants
Mr. Sandeep S. Koregave for respondent nos. 1 to 8

CORAM : GAURI GODSE, J.

CLOSED FOR ORDERS: 28th AUGUST 2024

PRONOUNCED ON: 22nd OCTOBER 2024

ORDER:

1. This second appeal is preferred by heirs and legal representatives of the original defendant to challenge the concurrent judgments and decrees directing the defendant to hand over the vacant and peaceful possession of the suit property. The suit was filed on the ground of title.

2. Learned counsel for the appellants submitted that the defendant

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was inducted as a tenant by the original owner, Lilawati. He submits that Lilawati's ownership of the suit property is not disputed. Lilawati expired on 16th September 1994. Thereafter, the plaintiffs issued a termination notice dated 5th May 2005. The defendant replied to the notice contending that Lilawati expired issueless and had no legal representatives. The defendant contended that all the rent was paid from time to time and that the defendant had also carried out repairs to the suit property.

3. Learned counsel for the appellants submits that a serious dispute was raised on the plaintiffs' ownership and their right to terminate the defendant's tenancy. He submits that the plaintiffs claim ownership over the suit property only based on the city survey record. He submits that the legal representatives of Lilawati had instituted Regular Civil Suit No. 342 of 2005 for declaration of ownership of the suit property. He submits that in the absence of any right, title, or interest in favour of the plaintiffs, they were not entitled to seek possession of the suit property on the ground that they had terminated the defendant's tenancy. He submits that the second appeal raises substantial questions of law on the plaintiffs' right to terminate the tenancy and seek possession.

4. To support his submissions, learned counsel for the appellants relied upon the decision of the Hon'ble Apex Court in the case of ***Shrikant R. Sankanwar And Others Vs. Krishna Balu Naukudkar***¹. He submits that the Hon'ble Apex Court held that the entries in the revenue records are basically for revenue purposes and do not constitute any title to the property in favour of any person. He submits that the legal principles in the said decision squarely apply to the present case. He submits that based on the revenue record, the plaintiffs cannot be held to be owners of the suit property and, thus, are not entitled to terminate the defendant's tenancy and seek possession.

5. Learned counsel for the appellants further relied upon the decision of the Hon'ble Apex court in the case of ***V. Dandapani Chettiar Vs. Balasubramanian Chettiar (Dead) by LRs and others***² to support his submissions on the applicability of sub-section (2) of Section 15 of The Hindu Succession Act 1956 ('the said Act'). He submits that in the present case, the plaintiffs are claiming through Lilawati's sisters. He submits that in view of the legal principles settled by the Hon'ble Apex Court in the case of ***V. Dandapani Chettiar***, the

¹ [2003(2) Mh.L.J. 276]

² (2003) 6 Supreme Court Cases 633

plaintiffs are not entitled to claim any right in Lilawati's property.

6. Learned counsel for the appellants relied upon the decision of the Hon'ble Apex Court in the case of *Vinay Eknath Lad Vs. Chiu Mao Chen*³ to support his submission that when the plaintiffs claim a derivative title from the original landlord and their derivative title to the suit property is questioned by defendant-tenant, the plaintiffs are required to establish their title. He submits that in the absence of any proof of plaintiffs' title, there would not be any landlord-tenant relationship between the parties. Thus, the plaintiffs would not be entitled to terminate the tenancy or seek possession. By relying upon the legal principles in the said decision, learned counsel for the appellants further submitted that though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the status of the landlord, the tenant is entitled to challenge the derivative of the title of the assignee of the original landlord who brings in an action to affect the tenancy. Learned counsel for the appellants thus submits that the facts of the present case are similar to the facts in the case of *Vinay Lad*, and the plaintiffs would not be entitled to seek possession from the defendant-tenant. On a similar proposition, learned counsel for the

³ (2019) 20 Supreme Court Cases 182

appellants relied upon the decision of the Apex Court in the case of *Sheela and Others Vs. Firm Prahlad Rai Prem Prakash*⁴ and *Subhash Chandra Vs. Mohammad Sharif and others*⁵. He submits that if the tenant makes a bonafide demand that the landlord should prove his ownership to protect himself under the Rent Control law, such demand cannot be said to be a denial of the landlord's title or disclaimer of tenancy.

7. Learned counsel for the appellants thus submits that in the present case, the plaintiffs are claiming a derivative title through the original landlady Lilawati and in view of the bonafide objection raised by the defendant to the plaintiffs' ownership, the plaintiffs would not be entitled to seek possession unless their ownership of the suit property through the original landlady was established.

8. Learned counsel for the appellants thus submits that the second appeal would require consideration as the aforesaid grounds raise substantial questions of law on the plaintiffs' entitlement to seek possession of the suit property without establishing their title.

9. Learned counsel for the respondents supports the impugned

⁴ (2002) 3 Supreme Court Cases 375

⁵ (1990) 1 Supreme Court Cases 252

judgments and decrees. He submits that the defendant was not entitled to dispute the plaintiffs' title. He submits that in the present case, the defendant's denial of the plaintiff's title should be accepted as a valid ground for the defendant's eviction. He submits that the plaintiffs are heirs and legal representatives of deceased Lilawati's sisters. Therefore, in view of Section 14 read with Section 15(2)(a) of the said Act, the title of the suit property devolves upon the plaintiffs.

10. Learned counsel for the respondents points out the findings of facts recorded by both Courts after examining the supporting documents produced by the plaintiffs to prove their ownership. He submits that after Lilawati's death, her sisters' names were entered. The plaintiffs' names were entered into revenue records, being the heirs and legal representatives of one of the sisters of Lilawati. Learned counsel for the respondent submits that based on the documentary and oral evidence on record, both the Courts have recorded findings of facts on the plaintiffs' entitlement to terminate the defendant's tenancy and seek possession being heirs and legal representatives of deceased Lilawati. He submits that the grounds argued on behalf of the appellants would not require any consideration by this Court in view of concurrent findings of facts accepting the

plaintiffs' title. He submits that the second appeal does not raise any question of law.

11. I have perused the impugned judgments. There is no dispute about the defendant being inducted as a tenant by the deceased Lilawati. The objection raised on behalf of the defendant to the suit is on the grounds of challenging the plaintiffs' title over the suit property. The plaintiffs contend that since the defendant was in arrears of rent since 1994, they frequently demanded rent from the defendant; however, he avoided the same. Hence, it was contended that they terminated the tenancy and filed the suit for recovery of arrears of rent and possession. The objection raised by the defendant on the plaintiffs' title is on the ground that the suit property was originally owned by Lilawati who died issueless in the year 1994. It is further pleaded by the defendant that she had no other heirs and legal representatives. The defendant relied upon Regular Civil Suit No. 342 of 2005 filed for declaration of ownership and title by one Balwant Eshwar Pattanshetti and three others. On perusal of the reasons recorded by the trial court, it appears that the defendant had prayed for a stay of the present suit on the ground of pendency of the earlier suit. However, the prayer was rejected on the ground that the parties and

the issues involved in both suits were different, and thus, it was not necessary to stay the present suit under section 10 of the Code of Civil Procedure, 1908.

12. The trial Court relied upon the revenue extract in the name of the plaintiffs, which indicates that after Lilawati's demise, the name of Parvati Lambe and the legal representatives of Shakuntala Lambe were entered as the heirs and legal representatives of the deceased Lilawati. It appears that the city survey record in the name of Parvati and Shakuntala, i.e. Lilawati's sisters, was never challenged. The trial Court further recorded that the city survey record at exhibit 16 clearly indicates that after making a necessary enquiry, the names of the plaintiffs were entered into the city survey record of the suit property. The said record was never challenged by the plaintiffs. Thus, the learned trial Court relied upon the undisputed revenue record in the name of plaintiffs who are heirs and legal representatives of deceased Lilawati through her sisters.

13. The trial Court also examined the defendant's case regarding rent payment and expenses allegedly incurred by him for repairs to the suit property. The trial Court also referred to the admissions given by

the defendant that since 1994, he has never paid any rent to the plaintiffs or any other person. The Trial Court also disbelieved the defendant's case regarding incurring expenses for repairs of the suit property. Trial Court, by referring to section 14 of the said Act, held that plaintiffs, being heirs and legal representatives of deceased Lilawati, were entitled to maintain the suit for possession on the ground of termination of defendant's tenancy. Since the defendant had relied upon Regular Civil Suit No. 342 of 2005 against the present plaintiffs regarding the title to the suit property, the trial Court in paragraph 30 of the impugned judgment, clarified that the judgment and decree in the present suit would be subject to the outcome of the Regular Civil Suit No. 342 of 2005. Thus, the trial Court has dealt with all the objections raised by the defendant which includes the arguments raised on behalf of the appellants in the second appeal.

14. The first Appellate Court confirms findings recorded by the trial Court by examining the pleadings and evidence on record. The first Appellate Court referred to the dismissal of Regular Civil Suit No. 342 of 2005, which was filed against the present plaintiffs regarding the title of the suit property. Thus, in view of the undisputed revenue record in the name of the plaintiffs and dismissal of the Regular Civil Suit No. 342 of

2005, which was against the present plaintiffs, the first Appellate Court confirmed the trial Court's findings by accepting the plaintiffs as owners of the suit property being heirs and legal representatives of deceased Lilawati. All the other objections regarding payment of rent and expenses towards repairs of the suit property were again reconsidered by the first Appellate Court.

15. In view of the concurrent findings on facts, the grounds raised on behalf of the appellants would not require any consideration by this Court as the same would amount to reappreciating the evidence on record. Even otherwise, the dismissal of the suit regarding the title of the plaintiffs is not disputed by the appellants. The revenue record in the name of the plaintiffs is also not disputed by the appellants. The suit filed against the present plaintiffs by the parties claiming to be heirs of Lilawati regarding the title of the suit property is dismissed. Thus, the grounds raised on behalf of the appellants by relying upon sub-section (2) of Section 15 of the said Act are not required to be considered by this Court as the same involves the facts that are not the subject matter of the present case. In a suit filed by the heirs and legal representative of the landlady of the property against the tenant, the issue regarding the applicability of sub-section (2) of Section 15 of

the said Act cannot be examined in the absence of necessary pleadings and necessary parties relevant for deciding the said point. In view of the aforesaid facts of the present case concurrently held by both the Courts, the decisions relied upon by the learned counsel for the appellants on the applicability of Section 15(2) of the said Act are of no assistance to the appellants.

16. In view of findings recorded by both Courts based on the documentary evidence as well as the dismissal of the suit filed against present plaintiffs regarding title, the appellants would not be entitled to seek any protection by relying upon the legal principles settled by the Apex Court in the case of *Vinay Lad* on Section 116 of the Indian Evidence Act. In view of the nature of the objection raised by the defendant, it cannot be said that it is a valid objection seeking a bonafide demand calling upon plaintiffs to prove their ownership. Thus, the legal principles settled in the case of *Sheela and Others* and *Subhash Chandra* would not be of any assistance to the appellants' arguments.

17. Learned counsel for the respondents relied upon the decision of the Apex Court in the case of *Bhagat Ram (Dead) by LRs Vs. Teja*

*Singh (Dead) by LRs*⁶ to contend that the succession to a property inherited by a female Hindu from her father or mother would devolve upon heirs and legal representatives of the parents. He submits that the legal principles settled by the Hon'ble Apex Court regarding the applicability of Section 15(2) (a) of the said Act would apply to the facts of the present case. He submits that in the facts of the decision in the case of *Bhagat Ram*, when two sisters had inherited the land from their mother and upon the death of one of the sisters, the land was mutated in favour of the surviving sister. He submits that the said inheritance was accepted by the Hon'ble Apex Court as a valid succession. He, thus, submits that in the present case, the plaintiffs are claiming through deceased Lilawati's sisters. Hence, the legal principles settled by the Apex Court in the case of *Bhagat Ram* would squarely apply to the present case.

18. Thus, in view of the well-settled legal principles referred to above, none of the grounds raised on behalf of the appellants would require consideration by this Court.

19. The second appeal does not raise any question of law which is required to be considered by this Court. Hence, the second appeal is

⁶ (2002) 1 Supreme Court Cases 210

dismissed.

20. In view of the dismissal of the second appeal, Civil Application No. 1435 of 2015 is disposed of as infructuous.

[GAURI GODSE, J.]