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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 338 OF 2024
WITH
CIVIL APPLICATION NO. 23 OF 2024
AND
INTERIM APPLICATION NO. 10298 OF 2024**

Shri Anil Namdev Sagar ... Appellant

Vs.

Shri Nishikant Namdev Shinde ... Respondent

Mr. Balasaheb G. Ligade for the Appellant.

CORAM : GAURI GODSE, J.

DATE : 16th JULY 2024

ORDER :

1. Heard. This Second Appeal is filed by the original plaintiff challenging the concurrent judgments and decrees allowing the counter claim of the defendant and directing the plaintiff to deliver possession of the suit property as described in the counter claim.

2. The appellant's suit for permanent injunction restraining the respondent from disturbing his possession over the suit property was dismissed, and the defendant's counter claim for possession of the suit property was decreed. Hence, the plaintiff preferred an

appeal before the District Court, which was dismissed, and the decree for possession in the counter claim stands confirmed.

3. Learned counsel for the appellant submitted that the plaintiff has been in possession of the alleged encroached area since the year 1980, as the same was allotted to the plaintiff's father for running the hotel business. He, therefore, submits that the plaintiff has also filed a separate suit challenging the allotment of the suit land in favour of the defendant under the provisions of The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 ["The Ceiling Act"]. He submits that the plaintiff has thus independent right in the suit property where the plaintiff runs his hotel business. He submits that the plaintiff was unable to produce the necessary documents in the trial Court to support his contentions. Hence, the appellant has filed an interim application in the second appeal for permission to lead additional evidence under the provision of Order XLI Rule 27 of the CPC.

4. Learned counsel for the appellant thus submits that considering the additional documents sought to be produced by the appellant, the second appeal would require consideration on the appellant's independent rights in the suit property. By way of additional evidence, the learned counsel for the appellant has

specifically relied upon a report dated 3rd January 2017 submitted by the learned Tahsildar before the learned Collector. He submits that the said report records that there is a breach of the condition of the allotment order passed in favour of the respondent in respect of the suit property. Learned counsel for the appellant thus submits that the proposed documents would indicate that the appellant has independent right in the suit property. Learned counsel for the appellant further submits that the report specifically records that since there is a breach of the condition of the allotment order, the land should be resumed in favour of the Government. Thus, the learned counsel submits that the additional documents would support the appellant's case that the appellant has independent rights in the suit property.

5. I have considered the submissions made on behalf of the appellant. Perused the papers of the second appeal as well as the application for additional evidence. Both the Courts have examined all the documents on record and given reasons for accepting that the defendant is the owner of the suit property. The plaintiff's case that he is running a hotel business in the suit property is partly accepted on the ground that his father was running the hotel business in the suit property through the original owner, Mane Deshmukh. The trial court has, on examination of the documents

on record, held that the defendant is the owner of the suit property. The case of the plaintiff that he has been a lawful possessor of the suit property since the year 1980 is not accepted by relying on the judgment passed in RCS No. 168 of 1994. The judgment and decree passed in the said suit was relied upon by the defendant to point out that the plaintiff was not entitled to seek protection through Mane Deshmukh, as in the said suit, it was held that Mane Deshmukh was not the owner of the suit property.

6. Along with the judgment in the earlier suit, the defendant had also relied upon the revenue records and the copies of measurement maps to support his contention that the plaintiff was unauthorisedly occupying the suit property. The trial Court has also referred to the cross-examination of the plaintiff, which indicates that he was unable to point out his date of possession and his source of possession since the year 1980, as claimed by him. The trial court has recorded specific findings of facts that the oral evidence coupled with the documentary evidence on record indicated that the plaintiff was running the hotel business in the part of the suit property from the year 1989. The earlier suit, i.e. RCS No. 168 of 1994, held that Mane Deshmukh was not the owner of the suit property. Thus, the case of the plaintiff that he was occupying the suit property through Mane Deshmukh is also not accepted as a

valid authority of the plaintiff to occupy the suit property.

7. The aforesaid finding on the ownership of the defendant is confirmed by the First Appellant Court by re-examining the evidence and documents on record. It is not in dispute that the allotment order under the Ceiling Act is in favour of the defendant. Thus, considering the documents on record regarding the allotment of land in favour of the defendant and in the absence of any specific pleading regarding the valid source of possession and want of the exact location of the property claimed by the plaintiff, the dismissal of the plaintiff's suit is confirmed by the First Appellate Court by accepting the title of the defendant on the suit property. The decree passed by the trial court allowing the counter claim of the defendant is thus confirmed by the First Appellate Court.

8. I do not find that there is any illegality or perversity in the reasons recorded by both the Courts accepting the case of the defendant. The documents sought to be relied upon by the learned counsel for the appellant by way of additional evidence are of no assistance to the appellant's case. The Tahsildar's report dated 3rd January 2017, relied upon by the learned counsel for the appellant at the most, would indicate that proceedings are initiated for breach of the allotment order. Even if it is found by the appropriate

authority that there is a breach of the allotment order, the same would not create any right in favour of the appellant to retain possession of the suit property. Thus, the grounds sought to be argued on behalf of the appellant cannot be considered by this Court in the second appeal.

9. The Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

10. In view of the dismissal of the Second Appeal, pending Civil Application No. 23 of 2024 and Interim Application No. 10298 of 2024 are dismissed as infructuous.

11. At this stage, the learned counsel for the appellant seeks stay to the execution and operation of the impugned decree. The impugned decree by the trial court is dated 12th July 2010. The First Appellate Court dismissed the appeal on 15th January 2018. Till date the impugned decree was never stayed. I do not see any reason to stay the impugned decree at this stage. Hence, the prayer for stay is rejected.

[GAURI GODSE, J.]