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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 296 OF 2021
WITH
INTERIM APPLICATION NO. 2617 OF 2021
IN
SECOND APPEAL NO. 296 OF 2021**

Ravindra Hanmant Sapkal and Ors ... Appellants/Applicants

vs.

Lalita Vitthal Chavan ... Respondent

Mr. Prasad Dani, Senior Advocate a/w. Mr. Kuldeep Nikam a/w. Mr. Prasad Avhad, for Appellants/Applicants.

Mr. Amol Gatne, for Respondent.

CORAM : GAURI GODSE, J.

DATED : 25th SEPTEMBER 2024

ORDER:

1. Heard learned counsels for the parties. This second appeal is preferred by the defendants to challenge the concurrent judgments and decrees granting an injunction in favour of the plaintiff, restraining the defendants from obstructing the plaintiff's possession. The dispute is with respect to agricultural land in which the defendants claim tenancy rights through the original tenant.

2. Learned senior counsel for the appellants submits that there was an order in the year 1961 regarding the surrendering of tenancy by the original tenant; however, the defendants filed an application for fixation of the purchase price under section 32G of the Maharashtra Tenancy and Agriculture Lands Act (**'Tenancy Act'**). He thus submits that the proceedings initiated under section 32G amount to impliedly challenging the order of surrender passed in the year 1961. He further submits that since the defendants filed the application under section 32G, in view of section 85 of the Tenancy Act, the Civil Court could not decide the issue with regard to the defendants' claim of Tenancy. He submits that since the proceedings under Section 32G were pending, there was a bar to the civil court's jurisdiction to decide the plaintiff's claim of being in possession on the ground that the original tenant had surrendered the tenancy. He further points out the provisions of section 85A of the Tenancy Act, which requires the Civil Court to refer any issue regarding tenancy that is to be decided or settled by the Tenancy Court. He submits that the bar to the jurisdiction of the civil court under section 85 is with regard to any question of tenancy, including whether the person is or was at any time in the past a tenant. He thus submits that in the present case, since the defendants claim tenancy rights through their predecessor, who was admittedly a

tenant in the past, there was a clear bar to the civil court to decide the defendants' claim of tenancy through the original tenant.

3. Learned senior counsel for the appellants thus submits that in view of the proceedings initiated by the defendants for fixation of the purchase price under section 32G, it is clear that the defendants have raised objections to the plaintiff's title and she being in possession of the suit property. He further submits that the grounds of objection raised on behalf of the appellants would amount to raising serious issues, indicating the plaintiff's title being under a cloud. Hence, in the suit simplicitor for an injunction, the plaintiff would not be entitled to any decree of injunction in the absence of a declaration of title. To support his submission, learned senior counsel relies upon legal principles settled by the Hon'ble Apex Court in the case of ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by Lrs and Others***¹. He submits that the Hon'ble Apex Court settled the legal principles regarding the maintainability of a simplicitor suit for an injunction and the power to grant injunction when the defendant raises a doubt on the plaintiff's title and the same amounts to plaintiff's title being under a cloud. He thus submits that the second appeal would require consideration on the aforesaid grounds, which raise substantial questions of law on the Civil

¹ (2008) 4 SCC 594

Court's jurisdiction to decide the defendants' tenancy rights and the plaintiff's entitlement to seek an injunction in a simplicitor suit for injunction, without there being any prayer for declaration of title.

4. Learned counsel for the respondent (plaintiff) supports the impugned decrees. He submits that the order of surrender of tenancy by the original tenant was produced on record. He submits that, admittedly, the said order was never challenged. He further relies upon the findings recorded by both the courts based on the order of surrender of tenancy passed on 27th June 1961 and the subsequent mutation entry no. 2611, which gave effect to the surrender of the tenancy in favour of the landlord. He submits that all the subsequent mutation entries regarding the names of the plaintiff entered as owner and in possession of the suit property were also produced on record. He submits that neither the order regarding surrendering of tenancy nor mutation entries were anytime challenged by respondents.

5. Learned counsel for the respondent further submits that after the suit was filed on 17th June 2013, the defendants, for the first time, filed an application under section 32G on 11th December 2014. He submits that the said application was initially rejected, which was challenged by the defendants by filing a tenancy appeal before the

sub-divisional-officer who reversed the rejection. Hence, the plaintiff filed a revision application in the Maharashtra Revenue Tribunal('MRT'), which is still pending. Learned counsel for the respondent further submitted that the defendants had filed an application under Section 70(b) for declaration of the tenancy. However, the same was withdrawn on 7th July 2014. He thus submits that based on the documents of the surrender of the tenancy by the original tenant and the subsequent undisputed mutation entries, both the courts accepted the plaintiff's case of being in possession. He submits that except for filing the application under Section 32G, the defendants have not produced any supporting documents to support their case of being in possession.

6. Learned counsel thus submits that in such circumstances, no issue was required to be referred by the civil court to be decided by the Tenancy Court. The suit being simplicitor for an injunction, both the courts have examined the documents in support of the plaintiff's case of title and possession and recorded the findings of facts. He thus submits that the bar under section 85 is not applicable in the present case.

7. Learned counsel for the respondent relied upon the decision of this court in the case of ***Maruti Sambha Surve Vs. Parshuram***

Krishan Koratkar and Anr². He submits that this court has taken a view that in the suit for simplicitor injunction, the civil court is not required to refer the issue to the Tenancy Court under Section 85A when sufficient material is produced on record to support the plaintiff's case of being in possession. Thus, according to the learned counsel for the respondent, even in the present case, reference to the Tenancy Court was uncalled for in view of the aforesaid admitted facts regarding proceedings under the Tenancy Act and mutation entries indicating the plaintiff's possession. He thus submits that the grounds argued on behalf of the appellants do not raise any substantial question of law.

8. To examine the rival contentions raised by the parties, I have perused the papers of the second appeal. The plaintiff's ownership of the suit property is not disputed. The defendants' claim of being in possession is only based on the application filed under section 32G. It is not in dispute that till date, the proceedings under section 32G have not been decided in favour of the defendants. Though the rejection of the 32G application is set aside by the Sub Divisional Officer, the same is challenged by the plaintiff before MRT.

9. The order of the year 1961 regarding surrendering of tenancy

2 1983 SCC Onlilne Bom 213

is admittedly not challenged by the defendants. The application filed by the defendants under section 70(b) is subsequently withdrawn. The order passed in 1961 under section 15 of the Tenancy Act regarding the surrendering of tenancy is an appealable order under clause (ga) of sub-section (1) of section 74 of the Tenancy Act. The proceedings initiated under section 32G are with regard to the fixation of the purchase price in favour of the agricultural tenant. Therefore, the issue regarding surrendering tenancy decided under section 15 cannot be a matter of challenge under the proceedings initiated under section 32G. The order under section 15 is independently appealable under section 74. Hence, I do not find any substance in the arguments raised on behalf of the appellants that filing of the proceedings under section 32G would impliedly mean that there is a challenge raised to the order of surrender of tenancy by the original tenant.

10. It is important to note that the defendants did file an application under section 70(b) to claim tenancy rights. However, the same was withdrawn. Thus, neither on the date of filing of the suit nor today is there any substantive claim of tenancy of the defendants pending except for their application under section 32G.

11. Both the courts thoroughly examined the documents on

record and the oral evidence to hold that the plaintiff is in possession of the suit property. The mutation entries regarding the surrendering of tenancy and the plaintiff and other predecessors in the title being in possession are not disputed. Thus, in the suit simplicitor for injunction, based on title, the civil court has not decided any issue of tenancy, which is required to be decided by the Tenancy Court as contemplated under section 85 of the Tenancy Act. Hence, there was no issue before the civil court to be decided which would warrant any reference as contemplated under section 85A. Thus, the second ground raised by relying upon sections 85 and 85A of the Tenancy Act would not raise any substantial question of law required to be decided by this court. Hence, there is no substance in the said ground.

12. Since the plaintiff's title is not under challenge and the only objection raised on behalf of the defendants is based on the application under section 32G, filed during the pendency of the suit would not mean that the plaintiff's title or possession is under cloud. Hence, the legal principles settled by the Apex Court in the case of **Anathula Sudhakar** would be of no assistance to the arguments raised on behalf of the appellants. In view of the aforesaid facts of the case, the view taken by this court in the case of **Maruti Surve**

would be applicable in the present case. Thus, in my view, in the suit simplicitor for injunction based on title and being in possession, no issue arose before the civil court, which was required to be decided by the Tenancy Court under the provisions of the Tenancy Act. I do not find any illegality or perversity in the reasons recorded by both the courts accepting the plaintiff's title and the case of being in possession.

13. Second Appeal does not raise any substantial question of law required to be decided by this court. Hence, the second appeal is dismissed. In view of the dismissal of the second appeal, the civil application is dismissed as infructuous.

(GAURI GODSE, J.)