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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 241 OF 2018**

Shri Jagannath Bapu Lavate(Deceased Thru
Lrs) 1A. Kakasaheb Jagannath Lavate ... Appellant

vs.

Dattu Babu Lavate ... Respondent

Mr. Ajay A. Joshi for Appellant.

CORAM : GAURI GODSE, J.

DATED : 15th OCTOBER 2024

ORDER:

1. This second appeal is preferred by the heirs and legal representatives of the original plaintiff to challenge the concurrent judgments and decrees dismissing the suit for declaration of his ownership and injunction.

2. Learned counsel for the appellants submits that the original plaintiff -Jagannath had purchased the suit property by a registered document on 6th April 1960 from the original owner Pandurang Deshmukh. He submits that the defendant no.1, i.e. Dattu who is the real brother of the plaintiff claims rights on the ground that their father-Bapu was a protected tenant and after his death defendant would be entitled to get tenancy rights in respect of the suit property. He submits that the suit is dismissed on the ground that it is hit by the principle of *res judicata* as the plaintiff's earlier suit for injunction

was dismissed by holding that he was unable to prove that he is the absolute owner of the suit property based on the document of the year 1960.

3. Learned counsel for the appellant submits that once the sale deed in favour of the plaintiff is not challenged by the parties, the plaintiff's title over the suit property could not have been disbelieved by both the courts. He submits that on the ground of tenancy rights of Bapu if at all defendant no.1 had to seek any relief, it is only the tenancy court that could have issued a declaration under the Maharashtra Tenancy and Agricultural Lands Act, 1948, regarding validity of the title on the ground that the tenancy rights were with Bapu. It is thus, submitted that the Civil Court could not render any finding on the sale deed on the ground of tenancy rights of Bapu and defendants.

4. Learned counsel for the appellant thus submits that the second appeal raises substantial questions of law on the aforesaid grounds of the civil court's jurisdiction to render any findings on the plaintiff's sale deed.

5. I have perused the impugned judgments. The sale deed executed by the original owner i.e the landlord in favour of the plaintiff is not in dispute. It is also not in dispute that Bapu was a

protected tenant in respect of the suit property. Admittedly the plaintiff's suit filed for injunction on the ground of ownership was dismissed by holding that the plaintiff was unable to prove the ownership in respect of the suit property. The said dismissal and the findings rendered in the plaintiffs' suit were not challenged further. Hence, no fault can be found in the reasons recorded by the courts on the ground of principle of *res judicata*.

6. Once, it is not in dispute that the Bapu was the original protected tenant of the suit property, the civil court could not have rendered any findings regarding ownership rights of the plaintiff based on registered sale deed executed during the subsistence of Bapu's tenancy rights. It is not in dispute that in the earlier suit plaintiff's claim of absolute ownership was not accepted and that the court in the said suit held the plaintiff and defendant no.1 were co-owners in respect of the suit property. In view of the aforesaid admitted facts, the reasons recorded by both the courts for dismissing the suit cannot be faulted.

7. In view of the aforesaid admitted facts, the arguments raised on behalf of the appellant would not require any consideration by this court. Second Appeal does not raise any question of law. Hence, the second appeal is dismissed.

(GAURI GODSE, J.)