

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 756 OF 2023

Suryakant Anna Deshmukh and ors

.....Appellants

Vs.

Sou. Mangal Shrirang Chinchkar and Ors

.....Respondents

Mr. Yogesh Patil Advocate for the Appellants
None for the respondents

CORAM : GAURI GODSE, J.

DATE : 9th DECEMBER 2024.

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ORDER:

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1. Heard learned counsel for the appellants. This second appeal is preferred by the original defendants to challenge the concurrent judgments and decrees declaring the plaintiffs as owners and restraining the defendants from obstructing the plaintiffs' possession over the suit land.

2. Learned counsel for the appellants submits that on the date of filing of the suit, there was 32M certificate under The Maharashtra Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act') issued in

favour of the defendants. He submits that though the order in favour of the defendants under the Tenancy Act and the certificate under Section 32M certificate is subsequently set aside, on the date of filing of the suit, the defendants were in possession. He submits that the certificate under Section 32M and the orders under the Tenancy Act existing on the date of the filing of the suit indicates that the defendants were in possession of the suit land. He therefore submits that even if the orders under the Tenancy Act are subsequently set aside at the behest of original land owner through whom the plaintiff claims ownership, the defendants were never dispossessed and therefore the plaintiffs would not be entitled to seek a decree of injunction against these defendants. He therefore submits that the second appeal would raise substantial questions of law on the ground of incorrect appreciation of evidence on record which indicates that on the date of filing of the suit, the defendants were in possession of the suit land.

3. I have perused the impugned judgments. There is no dispute that there was 32M certificate issued on 12th June 1989, i.e. prior to the filing of the suit. However, during the pendency of the suit, order setting aside certificate under Section 32M certificate has attained

finality. A perusal of the reasons recorded by both the Courts indicate that the defendants accepted dispossession before the tenancy authorities. The arguments on behalf of the defendants in the trial Court was only on the ground of 32M certificate in existence on the date of the filing of the suit. Hence, it was argued that the dispossession needs to be held as non-est as the original tenant, i.e. defendants' predecessor-in-title was found in possession on the tillers day. The contention on behalf of the defendants is disbelieved by the trial Court by referring to the revenue record which shows name of the plaintiffs as in cultivation of the suit land. The trial Court has exhaustively discussed the revenue proceedings and the revenue entries to hold that the plaintiffs were in possession of the suit land. In view of the orders passed under the Tenancy Act and revenue proceedings, both the Courts have accepted the plaintiffs' ownership and possession over the suit land.

4. The orders setting aside the order in favour of the defendants under Section 32G and certificate under Section 32M has attained finality. Hence, in view of the reasons recorded by both the Courts based on orders under the Tenancy Act and by the revenue authorities attaining finality, the grounds argued on behalf of the appellants would

not require any consideration by this Court.

5. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]