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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 28 OF 2017
WITH
CIVIL APPLICATION NO. 56 OF 2017**

Smt. Anandi Dattatraya Parit ... Appellant /Applicant
Vs.
Shivaji Dattu Babar and Others ... Respondents

Mr. N. J. Patil i/b. Mr. Amey Patil for the Appellant.

Mr. Rohit Parab i/b. Mr. C. G. Gavnekar for Respondent Nos. 1 to 4.

CORAM: GAURI GODSE, J.

DATE : 27th SEPTEMBER 2024

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing the appellant's suit for simplicitor injunction. The suit was filed based on title by contending that she was in possession of the suit property as a protected agricultural tenant.

2. Learned counsel for the appellant submits that the plaintiff had examined the landlord of the suit property who supported the

plaintiff's contention that she is in possession. He further submits that though the proceedings under The Maharashtra Tenancy and Agricultural Lands Act, 1948 ("Tenancy Act") were pending before the tenancy courts, the Civil Court has erred in recording a finding on the tenancy rights of the parties. He further submits that defendant no.1 had filed a suit in which the prayer for interim protection of his possession was rejected by the trial court. He submits that the appeal preferred by defendant no. 1 is also dismissed.

3. Learned counsel for the appellant thus submits that in a suit filed by respondent no.1, the possession of present plaintiff is accepted and defendant no. 1's application for temporary injunction is rejected on the ground that he was not found in possession. Learned counsel for the appellant thus submits that the Second Appeal raises substantial questions of law on the point that both the courts failed to consider the evidence of the original owner and that the Civil Court had no jurisdiction to decide the tenancy rights between the parties.

4. To examine the submissions made on behalf of the appellant, I have perused both the judgments as well as the orders passed in the interim application filed by defendant no. 1 in his suit. The

orders with regard to interim injunction passed in defendant no. 1's suit are at a prima facie stage and thus the same cannot be relied upon to decide the present Second Appeal. Even otherwise learned counsel for the appellant was unable to point out any specific finding even at prima facie stage recorded in his favour.

5. With regard to the argument on the Civil Court's jurisdiction in deciding tenancy rights is concerned, a perusal of the judgments do not indicate that the courts have recorded any finding on the tenancy rights. The trial court has clearly observed in paragraph 8 of the judgment that the issue whether defendant is a tenant or not is not a question for determination before the court. Both courts have examined the pleadings and evidence on record with reference to the plaintiff's claim of exclusive possession as agricultural tenant. Oral evidence of the owner led by the plaintiff is also examined by both the courts. The trial court has referred to the evidence where the original owner deposed that the plaintiff was in possession by way of adverse possession. Both the courts held that none of the documents and evidence produced by the plaintiff indicates that the plaintiff is in exclusive possession as agricultural tenant.

6. The suit is filed simplicitor for injunction based on tenancy

rights. It is in the absence of any supporting evidence both the courts have refused to grant a decree for injunction. The reasons recorded by the First Appellate Court indicate that the documents produced on record regarding extract of consolidation scheme and the payment receipts towards payment of cess, shows the name of the plaintiff and defendant as tenants. Thus, the First Appellate Court has confirmed the finding recorded by the trial court that the plaintiff was unable to show that she was in exclusive possession of the suit property.

7. I do not see any illegality of perversity in the reasons recorded by both the courts. The arguments raised on behalf of the appellant do not require any consideration by this court as the same do not raise any substantial question of law. Hence, the Second Appeal is dismissed.

8. In view of the dismissal of the Second Appeal, Civil Application No. 56 of 2017 is dismissed as infructuous.

[GAURI GODSE, J.]