

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.223 OF 2024
WITH
INTERIM APPLICATION NO.6972 OF 2024
IN
SECOND APPEAL NO.223 OF 2024

1. Shri Gangadhar Sonu Sonaware,
Deceased;
2. Smt. Satyabhama Laxman
Gavade, age 60 years, Occ :
Agriculture,
3. Shri Kishor Nanasaheb Gaikwad,
age 58 years, Occ : Agriculture,
4. Smt. Pratibha Kailas Rayte, Age
52 years, Occ : Agriculture,
5. Smt. Survarna Shantaram
Pansare, Age 45 years, Occ :
Agriculture,
6. Smt. Snehal Prashant Ogane, Age
55 years, Occ : Agriculture,
7. Smt. Pushpabai Nanasaheb
Gaikwad, Age 62 years, Occ :
Agriculture,
8. Smt. Walhyabai Kashinath
Rokade, Age : 70 years, Occ :
Agriculture,
9. Shri Malhari Dhondiram Gaikwad,
Age 56 years, Occ : Agriculture,

10. Shri Prashram Ghamaji
Gaikwad, Age 50 years, Occ :
Agriculture, Appellants Nos. 2 to
10, resident of Khede, Tal.
Niphad, Dist. Nashik.

11. Shri Pramod Manikrao Vadge,
Age 55 years, Occ : Business and
Agriculture, R/o Mahanand ..Appellants
Nagar, Manmad, Tal. Nandgaon,
Dist. Nashik.

V/S.

1. Shri Namdeo Bhausingh Sonawane,
Age 80 years, Occ : Agriculture,

2. Shri Balu Punjaram Sonawane,
Age 65 years, Occ : Agriculture,
Both are resident of Zadi,
Tal. Malegaon, Dist. Nashik.

3. Shri Laxman Punjaram Sonawane,
Age 62 years, Occ : Agriculture,
R/o Daregaon, Tal. Chandwad,
Dist. Nashik.

4. Smt. Akkabai Suresh Nalawade,
Age 58 years, Occ : Agriculture,
R/o Lasalgaon, Tal. Niphad, Dist.
Nashik.

5. Smt. Bayjabai w/o Anna Pawar,
Age 48 years, Occ : Agriculture,

6. Shri Shrawan Rama Sonawane,
Age 40 years, Occ : Agriculture,
Respondent Nos. 5 and 6 resident of
Zadi, Tal. Malegaon, Dist. Nashik.

7. Sunita Rama Sonawane,
Age 38 years, Occ : Agriculture,

8. Smt. Bhikubai Rama Sonawane,
Age 65 years, Occ : Agriculture,

9. Shri Sahebrao Pundlik Sonawane,
Age 65 years, Occ : Agriculture,

10. Shri Nanaji Pundlik Sonawane,
Age 48 years, Occ : Agriculture,

11. Sou. Meerabai Jeevan Kuvar,
Age 70 years, Occ : Agriculture,

12. Shri Rodu Deoba Sonawane,
Age 65 years, Occ : Agriculture,

13. Shri Balu Deoba Sonawane,
Age 45 years, Occ : Agriculture,
Respondent Nos. 9 to 13, resident of
Zadi, Tal. Malegaon, Dist. Nashik.

14 Smt. Yamunabai Shankar
Gaikwad, Age 55 years, Occ :
Agriculture, resident of Khede, Tal.
Niphad, Dist. Nashik.

15. Smt. Laxmibai Nathu Gaikwad,
Age 65 years, Occ : Agriculture,
resident of Khede, Tal. Niphad,
Dist. Nashik.

16 Shri Gopinath Nathu Gaikwad,
Age : 60 years, Occ : Agriculture,
resident of Khede, Tal. Niphad, Dist.
Nashik.

17 Shri Mothabau Shankar Dukale,

Age 60 years, Occ : Agriculture,

18. Sou. Pratibha Balu Dukale,
Age 45 years, Occ : Agriculture,

19. Shri Balu Shankar Dukale,
Age 50 years, Occ : Agriculture,

20. State of Maharashtra Government
Through : - Tahsildar Malegaon, ..Respondents
Tal. Malegaon, Dist. Nashik.

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Mr. Khushnood Akhtar *with Mr. Vinay Karodia i/b. Mr. Shivaji Nirmale, for the Appellants.*

Mr. Hrishikesh S. Shinde *for Respondent Nos. 1 to 13.*

Mr. Rahul P. Kasbekar *for Respondent Nos.17 to 19.*

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON : 15 APRIL 2024.

JUDGMENT PRONOUNCED ON : 19 APRIL 2024.

JUDGMENT:

1. By this appeal, Appellants challenge Judgment and Decree dated 16 January 2024 passed by the District Judge-3, Malegaon, District-Nashik in Regular Civil Appeal No.73 of 2023. The first Appellate Court has allowed the appeal filed by original Plaintiffs (Respondent Nos.1 to 13) and has reversed the order dated 28 July 2023 passed by the Joint Civil Judge, Senior Division, Malegaon, District-Nashik in Regular Civil Suit No.66 of 2023. The Suit, which was dismissed by the Trial Court under the provisions of

Order VII Rule 11 of the Code of Civil Procedure, has been restored by the first Appellate Court.

2. Respondent Nos. 1 to 13 are Plaintiffs in Regular Civil Suit No.66 of 2023, to which Appellants are impleaded as Defendants. Agricultural land bearing Gat No.748, admeasuring 13 Hectors 33 R plus *pot kharaba* (wastage) 1 Hector 11 R totally admeasuring 14 Hectors 44 R at Village-Zadi, Taluka-Malegaon, District -Nashik is the '**suit land**'. Ancestors of Plaintiffs claimed tenancy rights in the suit land and filed proceedings under Section 32-G of Maharashtra Tenancy and Agricultural Lands Act, 1948 (**Tenancy Act**), which came to be rejected by the Tehsildar and Agricultural Lands Tribunal (**ALT**) by order dated 25 August 1960. The landowners (ancestors of Defendant Nos. 1 to 13/Appellants) filed proceedings bearing 561 of 1963 before Tehsildar for return of the suit land, which was in possession of Plaintiff's ancestors. Tehsildar and ALT passed order dated 10 January 1963 directing that the possession of the suit land be handed over to the land owners and for that purpose ancestors of Plaintiffs, claiming to be tenants, were directed to be summarily evicted from the suit land under provisions of Section 32P(2) of the Tenancy Act.

3. It is the case of Plaintiffs that despite passing of order dated 10 January 1963, ancestors of Defendants did not take any steps for recovery of possession of the suit land from Plaintiffs and that accordingly, the suit land remained in their possession. The

ancestors of Plaintiffs filed proceedings before the ALT under Section 32G of the Tenancy Act bearing Case No.07 of 1988, which came to be rejected by order dated 20 September 1993 on the ground that the tenancy claims were earlier decided on 25 August 1960. The Plaintiff's ancestors filed appeal before Sub-Divisional Officer, Malegaon (**SDO**), bearing Tenancy Appeal No.1 of 1995, which came to be rejected on the ground of delay on 25 August 1995. Appeal No.24 of 1996 was filed before Maharashtra Revenue Tribunal, which came to be partly allowed on 29 October 1996 and SDO was directed to decide the appeal on merits. Accordingly, SDO Malegaon decided the appeal on merits and rejected the same by order dated 6 February 1998. It appears that in the meantime, Defendant Nos. 1 to 13 executed sale deed of suit land in favour of Defendant Nos.14 to 17.

4. The Defendants in the said Suit filed proceedings bearing Case No.2 of 2017 before Tehsildar and ALT for seeking recovery of possession of the suit land in pursuance of order dated 11 October 1963. The said case was allowed on 9 March 2018, against which, Plaintiffs filed appeal before the SDO, Malegaon, which came to be rejected on 21 February 2019. The further appeal filed by the Plaintiffs before the Additional Collector, Malegaon came to be rejected by order dated 23 July 2019.

5. In the above background, Plaintiffs filed Regular Civil Suit No.130 of 2018 before Civil Judge, Senior Division, Malegaon, seeking direction that the order passed by Tehsildar in Tenancy Case No.2 of 2017 for deletion of name of tenant was illegal and cannot be

implemented. The Plaintiffs also sought injunction against Defendant Nos. 2 to 7 therein from interfering with their possession without following due process of law. The Plaintiffs also sought declaration that they have become owners by adverse possession of the suit land. Some of the Defendants in that Suit, filed applications in Regular Civil Suit No.130 of 2018 seeking rejection of Plaint under Order VII Rule 11(d) of the Code. By order dated 20 June 2018, the Trial Court allowed the applications and rejected the Plaint in Regular Civil Suit No.130 of 2018. Appeal filed against that order of rejection of Plaint is pending before the District Court.

6. Tehsildar, Malegaon issued Notice dated 15 December 2022 for handing over possession of the suit land in favour of Defendant Nos. 1 to 13.

7. Taking issuance of notice by Tehsildar on 15 December 2022 for recovery of possession as the cause of action, Plaintiffs filed one more suit bearing Regular Civil Suit No.66 of 2023 before the Court of Civil Judge, Senior Division, Malegaon, seeking a declaration that they have become owners of suit property by adverse possession and seeking injunction against the Defendants therein. In Regular Civil Suit No.66 of 2023, some of the Defendants therein filed application at Exhibit-33 seeking rejection of Plaint under Order VII Rule 11 of the Code. The said application came to be allowed by the Trial Court by order dated 28 July 2023 and the Plaint in Regular Civil Suit No.66 of 2023 came to be rejected.

8. Aggrieved by the order passed by the Trial Court passed on 28 July 2023, Plaintiffs filed Regular Civil Appeal No.73 of 2023 before the District Judge-3 Malegaon. By Judgment and Decree dated 16 January 2024, the first Appellate Court has allowed the appeal filed by Plaintiffs and has set aside order of rejection of Plaint dated 28 July 2023. The first Appellate Court has restored Regular Civil Suit No.66 of 2023 to be decided on merits. Aggrieved by the Judgment and Decree dated 16 January 2024 passed by the first Appellate Court, the Appellants have filed the present appeal.

9. When the Second Appeal came up for admission, the same came to be admitted by order dated 15 April 2024 by formulating the following substantial questions of law:-

- (i) Whether the first Appellate Court is justified in reversing the order passed by the Trial Court rejecting the plaint in Regular Civil Suit No.66 /2023 under Order 7 Rule 11 of the Civil Procedure Code?
- (ii) Whether the suit filed by the Plaintiffs bearing Regular Civil Suit No.66/2023 is barred by the provisions of Section 85 of the Maharashtra Tenancy and Agricultural Lands Act, 1948?
- (iii) Whether the Plaintiffs are entitled to file fresh suit on same cause of action under Order 7 Rule 13 of the Civil Procedure Code?.

10. Mr. Akhtar, the learned counsel appearing for Appellants would submit that the first Appellate Court has erred in reversing the order passed by the Trial Court rejecting the Plaint under Order VII

Rule 11(d) of the Code. That the Appellants have secured an order from Tehsildar and ALT in the year 1963, under which Plaintiffs/their ancestors were supposed to handover possession of the suit land to Appellants. That despite passage of more than 61 years, Appellants are not able to enjoy the fruits of the order passed on 11 October 1963. That Plaintiffs filed numerous proceedings to establish their tenancy claims in respect of the suit land and that all their claims have been rejected. That after rejection of their tenancy claims, Plaintiffs have come out with a novel idea of seeking declaration of acquisition of ownership by adverse possession. Mr. Akhtar would submit that the Plaint in Regular Civil Suit No.130 of 2018 filed seeking the same relief of declaration of ownership by adverse possession, has been rejected by the Trial Court by order dated 20 June 2018. That therefore Plaintiffs cannot be permitted to institute one more suit seeking the same relief.

11. Mr. Akhtar would further submit that Regular Civil Suit No.66 of 2023 is otherwise barred by provisions of Section 85 of the Tenancy Act. That Plaintiffs are seeking a declaration contrary to the orders passed by the Revenue Authorities and therefore their suit is clearly barred under Section 85. That the first Appellate Court has erred in not appreciating the fact that repeated suits are being filed by Plaintiffs to somehow delay delivery of possession of the suit land in pursuance of orders passed by the Revenue /Tenancy Authorities, which have attained finality. He would pray for setting aside the order passed by the first Appellate Court.

12. *Per contra*, Mr. Shinde, the learned counsel appearing for Respondent Nos.1 to 13 would oppose the appeal and support the order passed by the first Appellate Court. He would submit that bar under Section 85 of the Tenancy Act is not attracted for seeking a declaration of acquisition of ownership by adverse possession. That while deciding application under Order VII Rule 11(d) of the Code, the Court is required to take into consideration only the averments made in the plaint, which clearly indicate that Plaintiffs did not seek any prayer in respect of their tenancy claims. Mr. Shinde would also rely upon provision Order VII Rule 13 of the Code in support of his contention that filing of fresh suit is not barred if the plaint is rejected under Order VII Rule 11. Mr. Shinde would further submit that the suit land is being possessed by the Plaintiffs' ancestors for the last several decades as the names of their ancestor-Tukaram Dashrath Bhil was recorded by mutation entry Nos.536 and 537 in 'other rights' column. That though the proceedings filed by Plaintiff's ancestors for declaration of ownership under provisions of Section 32G of the Tenancy Act were dismissed on 25 August 1960, possession of Plaintiffs has not been disturbed even once after dismissal of those proceedings on 25 August 1960. That Plaintiff's ancestors filed proceedings for determination of purchase price of the suit land and it cannot be stated that Plaintiffs or their ancestors recognised the rights of Defendant Nos. 1 to 13 at any point of time. That on account of undisturbed possession of Plaintiffs, they have acquired ownership in respect of the suit land by adverse possession. Mr. Shinde would further submit that Appellants/Defendant Nos.1 to 13 have already sold the suit land in favour of Defendant Nos. 14 to 17 and that therefore the proceedings filed by them to seek

possession of the suit land are totally baseless. That Plaintiffs must be permitted to prove their claim of adverse possession, unconnected with any tenancy proceedings, by taking the Suit to trial Mr. Shinde would pray for dismissal of the appeal.

13. Rival contentions of the parties now fall for my consideration.

14. A perusal of order dated 28 July 2023 passed by the first Appellate Court would indicate that the Trial Court has rejected the Plaint under provisions of Order 7 Rule 11(d) of the Code on essentially two grounds. Firstly, it held that the cause of action for filing of Regular Civil Suit No. 66 of 2023 is passing of orders in Tenancy Case No.2 of 2017 and that therefore, the Suit is barred by Section 85 of the Tenancy Act. Secondly, it held that for same cause of action Regular Civil Suit No.130 of 2018 was filed, Plaint in which has already been rejected under Order 7 Rule 11(d) of the Code. The Trial Court has further held that Appeal No. 93 of 2018 is already pending before the District Court, Malegaon, challenging the order of rejection of Plaint in Regular Civil Suit No.130 of 2018 and therefore in the event of the appeal being allowed, the Regular Civil Suit No.130 of 2018 would be restored. Thus, broadly on twin reasonings of bar under Section 85 of the Tenancy Act and similarly in the relief sought in Suit Nos.130 of 2018 and 66 of 2023, the Trial Court has rejected the Plaint under Order VII Rule 11(d) of the Code.

15. The first Appellate Court has reversed the order of the Trial Court by holding that bar of *res judicata* cannot be a ground for rejection of Plaint under Order VII Rule 11(d) of the Code. The first Appellate Court has also held that Order VII Rule 13 of the Code permits institution of a fresh suit upon same cause of action. The first Appellate Court has held that the Plaintiffs are the *dominus litis* and therefore it is for them to decide the reliefs to be sought on the strength of particular factual matrix based on a cause of action. The first Appellate Court has held that Plaintiffs have not attempted to challenge Notice issued by Tehsildar, even though issuance of notice is pleaded as cause of action for institution of the Suit. The first Appellate Court has further held that in absence of any challenge to order passed by any revenue authority, bar under Section 85 of the Tenancy Act cannot come into play. It has further held that institution of two similar Suits cannot be a ground for invocation of provision under Order VII Rule 11(d) of the Code. The Appellate Court thereafter referred to provisions of Section 151 of the Code and according to it, the Court can curb institution of two or more similar Suits. On the above particular reasonings, the first Appellate Court has proceeded to reverse the order of rejection of Plaint and has restored Regular Civil Suit No.66 of 2023.

16. It is well settled principle that for deciding application for rejection of plaint under Order VII Rule 11 of the Code, averments in Plaint are required to be taken into consideration. I have gone through the Plaint filed in Regular Civil Suit No.66 of 2023. Plaintiffs have narrated the entire history of litigation that ensued between the parties relating to tenancy rights. They have pleaded that the suit

land bearing erstwhile Survey Nos.294 and 295 were in possession of Tukaram Bhil (Plaintiffs' ancestor) and therefore his name was entered in 'other rights' column of revenue records as protected tenant vide mutation entry Nos.536 and 537. That thereafter name of Bhausing Kedu Bhil was entered in 'other rights' column of revenue records vide mutation entry No.855 effected on 2 January 1957. Plaintiffs thereafter pleaded about initiation of proceedings under Section 32G of the Tenancy Act for determination of purchase price by their ancestors. The said proceedings were however, rejected by ALT vide order dated 25 August 1960. Plaintiffs pleaded that despite rejection of Section 32G proceedings on 25 August 1960, the suit land remained in their ancestor's possession. Plaintiffs have thereafter pleaded about filing of Tenancy Case No. 561 of 1963 by ancestors of Defendant Nos.1 to 13 for recovery of possession of the suit land under Section 32P (2) of the Tenancy Act. The said case was allowed on 11 October 1963 directing Plaintiffs /their ancestors to handover possession of the suit land in favour of Defendant Nos. 1 to 13 /their ancestors. According to Plaintiffs despite order dated 11 October 1963, the suit land remained in their ancestor's possession.

17. Plaintiffs thereafter averred in the Plaint about proceedings initiated by them under Section 32G of the Tenancy Act bearing Case No.7 of 1988 and its rejection by order dated 20 September 1993. They pleaded about rejection of appeal by the SDO on the ground of delay on 25 August 1995. Thereafter they pleaded about filing of the appeal in Maharashtra Revenue Tribunal, its partial success and remand of proceedings before the SDO for decision on merits. They thereafter pleaded about rejection of the

appeal by the SDO on merits on 6 March 1998. This is how the Plaintiffs pleaded about unsuccessful attempts made by them/their ancestors for establishment of their tenancy claim and for determination of purchase price in respect of the suit land and ultimate rejection of those proceedings on 6 March 1998.

18. Plaintiffs thereafter pleaded in the Plaint about failure on the part of Defendant Nos.1 to 13 /their ancestors to seek recovery of possession during the period from 11 October 1963 till the year 2017 and filing of Tenancy Case No.2 of 2017 for recovery of possession. They pleaded about order passed by the Tehsildar on 9 March 2018 allowing Tenancy Case No.2 of 2017, filing of appeal by the Plaintiffs before the SDO, its rejection on 21 February 2019, filing of further appeal before the Additional Collector by Plaintiffs and its rejection on 23 July 2019. Thus, this attempt of Plaintiffs to protect their possession also failed. This is how Plaintiffs narrated detailed chronology of attempts made by their ancestors for fixation of purchase price of the suit land, once during 1960 and second time during 1988 to 1998. They also narrated chronology of orders passed in proceedings for recovery of possession in favour of Defendant Nos.1 to 13 during the year 2017 to 2019. Plaintiffs thereafter averred in paragraph 10 of the Plaint that despite passing of order dated 11 October 1963 for delivery of possession of suit land in favour of ancestors of Defendant Nos. 1 to 13, they failed to recover possession of suit land from Plaintiffs/ their ancestors and that therefore the Plaintiffs have become owners by adverse possession. Plaintiffs pleaded about improvements done in the suit lands by them by incurring expenditure and how they acquired title by prescription.

Plaintiffs thereafter pleaded about issuance of Notice by Tehsildar dated 15 October 2022 directing Plaintiffs to handover possession of the suit land to Defendant Nos. 1 to 13 on 9 January 2023. Plaintiffs thereafter pleaded about transactions executed by Defendant Nos. 1 to 13 in favour of Defendant Nos.14 to 17 and contended that the said sale transaction are not binding on them. The cause of action as pleaded in paragraph 15 of Plaint is sending of Notice by Tehsildar for recovery of possession. On above broad pleadings, Plaintiffs sought prayer for declaration that they have become owners by adverse possession. They also sought relief that sale transaction effected in favour of Defendant Nos.14 to 17 are not binding on them. They further sought injunction against Defendants.

19. In my view, perusal of the Pleadings in the Plaint filed in Regular Civil Suit No.66 of 2023 would clearly indicate that though the suit filed ostensibly for seeking a declaration of acquisition of ownership by adverse possession, the same is aimed essentially at defeating the Notice dated 15 December 2022 issued by Tehsildar for recovery of possession. Paragraph 15 of the Plaint makes it explicitly clear that issuance of the said notice by Tehsildar is the cause of action for filing the Suit. Perusal of the detailed pleadings in the Plaint would leave no room for doubt that though no order of any Tenancy /Revenue Authorities is challenged, the entire suit is aimed at defeating various orders passed by the Revenue /Tenancy Authorities. The suit seeking declaration of ownership by adverse possession is cleverly filed after receipt of notice by Tehsildar issued on 15 December 2022 for the purpose of implementation of orders dated 11 October 1963 and 9 March 2018 in Tenancy Case No. 2 of Megha

2017. Plaintiffs have failed in their attempts to challenge the orders passed in Tenancy case No. 2 of 2017 and now they desire to defeat implementation of orders passed in those proceedings by raising a plea of acquisition of ownership by adverse possession.

20. The claim of acquisition of ownership by adverse possession is again referable to the orders passed in tenancy proceedings as the period of 12 years is computed by Plaintiffs by referring to order dated 11 October 1963. Thus, the claim for adverse possession is clearly linked to the order passed by the ALT on 11 October 1963.

21. Section 85 of the Tenancy Act provides thus:-

85. Bar of jurisdiction.

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question (including a question, whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him) which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

Explanation.— For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906.

22. Thus there is absolute bar of jurisdiction of Civil Court to settle, decide or deal with any question, which is required to be settled, decided or dealt with by the ALT. Though Plaintiffs did not seek any declaration with regard to their alleged tenancy rights in the Suit, what they actually seek to do is to defeat the notice issued for implementation of order passed under the Tenancy Act. Tenancy Tribunal has held that Plaintiffs are not entitled to become owners nor can possess the suit land. The suit is filed to protect possession by raising a claim of acquisition of ownership by adverse possession. Plaintiffs thus seek dealing with something which is already dealt with by Tenancy Tribunal. Plaintiffs' suit can clearly be held to be the one directly linked with the issue decided by the Tenancy Tribunal under the provisions of Tenancy Act. Once ALT directed delivery of possession of the suit land in favour of Defendant Nos.1 to 13/ their ancestors under provision of Section 32P (2) of the Tenancy Act, no suit can be filed in Civil Court to protect possession contrary to the said order passed by the ALT.

23. The declaration of acquisition of ownership by adverse possession is cleverly sought in the present case with a view to defeat implementation of order dated 11 October 1963 passed by the ALT under provisions of Section 32P(2) of the Tenancy Act. Under Section 85 of the Tenancy Act no suit can be filed with a view to defeat any order passed under the provisions of the Tenancy Act. What Plaintiffs are doing in the present case is that they are deliberately omitting to challenge the order dated 11 October 1963 or order dated 9 March 2018 passed in Tenancy Case No.2 of 2017. Both orders dated 11 October 1963 as well as 9 March 2018 directed them

to handover possession of the suit land to Defendant Nos.1 to 13. Plaintiffs have already unsuccessfully challenged the order dated 9 March 2018 by filing two hierarchical appeals before the SDO and Additional Collector. Now the suit is aimed at defeating the order dated 9 March 2018. In my view, therefore Regular Civil Suit No.66 of 2023 filed by the Plaintiffs clearly barred under the provisions of Section 85 of the Tenancy Act.

24. Since Regular Civil Suit No.66 of 2023 is held to be barred under Section 85 of the Tenancy Act, it is not necessary to decide the second aspect of rejection of Plaint on the ground of permissibility to file multiple proceedings seeking the same relief. Suffice it to observe that in Regular Civil Suit No.130 of 2018 also the Plaintiffs had sought declaration of acquisition of ownership by adverse possession. The said suit was filed on the cause of action of passing of order dated 9 March 2018 in Tenancy Case No.2 of 2017. The only difference between causes of actions in the two suits is that while Regular Civil Suit No.130 of 2018 was filed on the cause of action of passing of order dated 9 March 2018, Regular Civil Suit No.66 of 2023 is filed on the cause of action issuance of Notice by Tehsildar for implementation of order dated 9 March 2018. True it is that there is difference in some of the reliefs sought in the two suits as well as in the Defendants impleaded in the two suits. However, the purpose of filing both the suits is common. In the light of findings recorded by me that Regular Civil Suit No.66 of 2023 is barred by provision of Section 85 of the Tenancy Act, I do not wish to delve deeper into the objection of *res judicata* being considered for rejection of plaint under Order VII Rule 11 of the Code.

25. Though in my view, the first Appellate Court has erred in relying on Order VII Rule 13 of the Code, it is not necessary to go into that aspect in view of the findings recorded about bar under Section 85 of the Code.

26. The substantial questions of law framed in the present Second Appeal are accordingly answered by holding that the suit filed by the Plaintiffs (Regular Civil Suit No.66 of 2023) is barred by provisions of Section 85 of the Tenancy Act. The Plaintiffs are not entitled to file a fresh suit on the same cause of action under Order VII Rule 13 of the Code. The first Appellate Court was not justified in reversing the order passed by the Trial Court rejecting the Plaint in Regular Civil Suit No.66 of 2023 under Order VII Rule 11 of the Code.

27. The order passed by the first Appellate Court is thus indefensible. The appeal accordingly succeeds and I proceed to pass the following order:

(i) Judgment and Decree dated 16 January 2024 passed by the District Judge-3, Malegaon, District-Nashik in Regular Civil Appeal No.73 of 2023 is set aside.

(ii) Order dated 28 July 2023 passed by the Joint Civil Judge, Senior Division, Malegaon, District-Nashik in Regular Civil Suit No.66 of 2023 is confirmed.

(iii) Consequently, Complaint in Regular Civil Suit No.66 of 2023 is rejected under the provisions of Order VII Rule 11 of the Code.

28. With the above observations the Second Appeal is allowed with costs.

29. The interim application stands disposed of.

SANDEEP V. MARNE, J.