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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 851 OF 2017
WITH
INTERIM APPLICATION NO. 13505 OF 2024
CIVIL APPLICATION NO. 1754 OF 2017
IN
SECOND APPEAL NO. 851 OF 2017**

Chandrakant Deu Papde and ors

.....Appellants

Vs.

Godavari Pandurang Patil

.....Respondent

Mr. Mandar Limaye a/w Mr. Vedant Bende Advocate for the Appellants

CORAM : GAURI GODSE, J.

DATE : 7th OCTOBER 2024

ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the original defendants challenging the concurrent judgments and decrees granting declaration and injunction in favour of the plaintiff. The defendants are claiming to be tenants in respect of their respective areas pursuant to the orders passed under The Maharashtra Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act').

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2. Appellant no. 2 has expired. Learned counsel for the appellants submits that he has filed Interim Application No. 13505 of 2024 to bring on record the names of heirs and legal representatives of the deceased Appellant No.2. He submits that there is a delay of almost more than five years in filing the application. Since the second appeal has been pending admission since 2017, I called upon the learned counsel for the appellants to point out, whether the second appeal raises any substantial question of law. Hence, though the application for bringing on record names of heirs and legal representatives of deceased appellant no. 2 is pending, I have permitted the learned counsel who appears for the appellants as well as heirs and legal representatives of deceased appellant no. 2 to argue the second appeal on merits.

3. Learned counsel for the appellants submits that in the suit filed for declaration and injunction, the Trial Court refused to grant any declaration regarding the enquiry in the tenancy proceedings. He relies upon the findings recorded by the Trial Court in paragraph 15 of the judgment. He submits that once the Trial Court refused to grant any declaration regarding the subject matter of the enquiry pending before the Maharashtra Revenue Tribunal ('MRT'), the first Appellate Court, in

an appeal preferred by the defendants, has given contrary findings in paragraph 33 of the impugned judgment.

4. Learned counsel for the appellants further submits that pursuant to the compromise between the parties in the proceedings initiated by the landlady under Section 32P of the Tenancy Act, the appellants were held entitled to half portion of old survey no. 111/1, admeasuring 15 Acres and 16R. He submits that pursuant to the said compromise, a 32M certificate was issued in favour of the appellants. He submits that since there was a dispute regarding the area mentioned in 32M certificates, the same was challenged before MRT and is still pending. He submits that the first Appellate Court erred in reversing the findings recorded by the Trial Court regarding the tenancy enquiry in an appeal preferred by the appellants. He submits that the second appeal thus would raise substantial questions of law on the findings recorded by the first Appellate Court in paragraph 33 of the impugned Judgment.

5. I have perused the reasons recorded by both the Courts. There is no dispute that there was a compromise in the proceedings initiated under section 32P by the plaintiff ("landlady"). It is also not in dispute that pursuant to the compromise, the landlady was held entitled to half

share in old survey no. 111/1, admeasuring 15 Acres and 16R. All these facts regarding the compromise and the subsequent revenue entries are discussed by both the Courts. The plaintiff's prayer for declaration and injunction, which is granted, is based on a compromise recorded in the proceedings initiated under Section 32P of the Tenancy Act. 32M certificate issued in favour of the appellants was set aside in the appeal preferred by the landlady. Hence, the appellants have filed a revision before MRT. Since the enquiry was pending before the MRT, the Trial Court refused to grant any declaration regarding the enquiry pending before the MRT. However, the Trial Court accepted the plaintiff's title based on the compromise, and a declaration regarding the plaintiff's ownership and an injunction restraining the appellants from encroaching or causing obstruction to the plaintiff's possession was granted.

6. The appellants had filed a counterclaim seeking a decree for injunction. The Trial Court rejected the counterclaim. In an appeal preferred by the original defendants, i.e. present appellants, the Trial Court's decree is confirmed. The ground of challenge raised on behalf of the appellants regarding findings recorded by the first Appellate Court in paragraph 33 is concerned; the first Appellate Court has also

accepted the plaintiff's case regarding her ownership and possession based on the compromise. The first Appellate Court referred to the order passed in proceedings initiated under section 32P. There is no dispute that the said order has attained finality. So far as the cancellation of the 32M certificate is concerned, the first Appellate Court has clearly recorded that the pendency of the proceedings with regard to the 32M certificate would not oust the jurisdiction of the Civil Court regarding the prayers of the plaintiff.

7. Since the compromise recorded in the proceedings initiated under section 32P has attained finality, I do not see any error in the reasons recorded by the first Appellate Court in paragraph 33. The proceedings regarding the issuance of a 32M certificate are pending before the MRT. Both Courts have not recorded any findings on the pending proceedings before the MRT.

8. Hence, I do not see any illegality or perversity in the reasons recorded by the First Appellate Court. There is no substance in the arguments raised on behalf of the appellants. The second appeal does not raise any substantial question of law.

9. Hence, the second appeal is dismissed.

10. In view of the dismissal of the second appeal, Interim Application No. 13505 of 2024 and Civil Application No. 1754 of 2017 are disposed of as infructuous.

[GAURI GODSE, J.]