



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 199 OF 2023

SAYAJI KHANDERAO JADHAV DIED
THROUGH LRS BHAUSAHEB SAYAJI JADHAV AND OTHERS
VERSUS

MADHAUKAR BHAGWAN RAJHANS AND OTHERS

.....
WITH

SECOND APPEAL NO. 200 OF 2023

WITH

CIVIL APPLICATION NO. 4812 OF 2023
IN SA/199/2023

WITH

CIVIL APPLICATION NO. 4815 OF 2023
IN SA/200/2023

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Advocate for the Appellants-Applicants in both matters : Mr.Narwade Narayan B.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 27th JUNE 2025

PER COURT :

. Heard learned counsel Mr.Narwade for the appellants.

2. Both the appeals are emanating from identical set of facts and circumstances. There are concurrent finding of facts recorded by both the courts below in both appeals. For the sake of convenience, parties

in the Second Appeal No.199 of 2023 are referred as Appellant/Sayaji and Respondent/Madhukar..

3. In Second Appeal No.199 of 2023, R.C.S No.121 of 2002 was filed by the appellant/Sayaji for declaration that they acquired title by adverse possession and perpetual injunction. The suit was dismissed vide judgment and decree dated 29.09.2011. Being aggrieved R.C.A No.416 of 2011 was filed which was dismissed on 28.02.2019. Hence, Appellant/Sayaji has filed second appeal.

4. In Second Appeal No.200 of 2023, R.C.S No.24 of 2003 was filed by respondent/Madhukar for possession and *mesne* profits. It was decreed on 13.01.2015. Being aggrieved R.C.A. 86 of 2015 was filed by the appellant/Sayaji. It was dismissed vide judgment and decree dated 28.02.2019.

5. It's a case of appellant/Sayaji that he was inducted in the suit land bearing Survey No.565/2 (gat no.318) admeasuring 4H 45 R. He is continuously in possession since 1968 as protected tenant on annual rent of Rs.400/- khand. Without interruption for more than 34 years, he remained in possession and perfected title by adverse possession. Though parties resorted to proceedings before the revenue authorities, possession has not been disturbed. On this ground he had filed R.C.S No.121 of 2002. On the same basis he defended suit filed by the respondents.

6. The case of the respondent/Madhukar is that, Bhagwan, their

father was the owner of the suit land. Appellant/Sayaji was unauthorized cultivator because he was merely servant. No tenancy right was conferred upon him. He illegally mutated his name in the 'Record of Rights' which was assailed by Bhagwan before Tehsildar. It was decided on 17.08.1978 holding that possession of Sayaji was illegal and without any payment of Khand to the owner. Said decision was further assailed before Sub-divisional officer and thereafter to the Collector.

7. On 03.06.1991, Collector remanded the matter to the Tehsildar. After remand, Tehsildar again conducted enquiry in proceedings, Crop Case No.15 of 1988 and passed order dated 17.04.1989 reiterating that possession of appellant/Sayaji was without payment of any Khand. The said order was confirmed upto Collector. On the above backdrop, parties litigated before the trial courts below.

8. The pre-dominant contention of the appellant is that he is tenant or protected tenant in the suit land and he has perfected title by adverse possession. So far as plea of adverse possession is concerned, both the courts below have recorded concurrent findings of facts against appellants. Mere long standing possession since 1968 would not culminate into title by adverse possession. There is absolutely no plea and evidence on record to indicate that possession of the appellant was hostile, open and in derogation of the title of the original owner. On the contrary when the appellants came with a

theory of tenancy, the plea of adverse possession would be inconsistent with it. Neither is there any material on record to show that initially appellant was inducted as a tenant and by resorting to the 'The Bombay Tenancy and Agricultural Lands Act, 1948' (hereinafter in short referred to as B.T.A.L Act), he became deemed purchaser or tenant purchaser.

9. The concurrent findings of facts recorded by both the courts below in R.C.S No.121 of 2002 and R.C.A No.416 of 2011 call for no interference. I do not find that any substantial question of law exists in the appeal emanating from R.C.S No.121 of 2002.

10. Appellant/Sayaji claims to be in possession since 1968. The record of rights showing his name was challenged by the respondents. Initially by order dated 17.08.1978, Tehsildar held that his possession was illegal and it was pencil entry only. The said possession was not upset though appellant preferred appeals in the hierarchy. The matter was remanded by Collector vide order dated 13.06.1981. After remand also order passed by Tehsildar on 17.08.1978 was reiterated on 17.04.1989. The said order was confirmed by Sub-divisional Officer on 31.03.1991 and thereafter by Additional Collector on 24.11.2005.

11. The factum of possession of the appellants in the suit land can not be disputed. However, mere factum of possession would not disclose any title. The plea of adverse possession has already been

negated by competent civil courts. Appellant failed to establish that he is tenant or protected tenant and the proceedings for purchasing the land from the original owner were resorted to under Section 32 of B.T.A.L Act.

12. Both the courts below in R.C.S No.24 of 2003 has also taken into account Section 4 of the B.T.A.L Act. Respondent No.1/ Madhukar is consistently taking a plea that Sayaji was introduced as a servant. His possession is held to be unauthorised. He is not covered by Section 4 of Act to be treated as tenant or protected tenant. Besides that the concurrent findings of facts reveal that there is absolutely no evidence on record to show that actually khand was paid except the bare pleadings of the appellant/ Sayaji that he was tenant on khand of Rs.400/-. In that view of the matter, I do not find any substance in the submissions of learned counsel for the appellants.

13. In Second Appeal No.200 of 2023 also there are concurrent findings of facts. Both the courts below have duly considered all aspect of the case. The plea of limitation has also been negated by both the courts below. There is no merit in submissions of learned counsel of appellant regarding longstanding possession, plea of adverse possession or limitation. Under this facts and circumstances, I do not find that any substantial question of law is involved in both the appeals.

15. Both the Appeals are dismissed.

16. Civil applications also stand disposed of.

[SHAILESH P BRAHME, J.]

vsj..