



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

57 SECOND APPEAL NO. 488 OF 2015
WITH
CIVIL APPLICATION NO. 9823 OF 2013
IN SA/488/2015

GIRDHAR SHIVRAM PATIL, L.RS. SHAKUNTALABAI AND OTHERS
VERSUS

SHRIRAM MANDIR SANSTHAN, KOTHALI KHURD THROUGH ITS TRUSTEES

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Mr. Suraj P. Tiwari h/f. Mr. N. L. Chaudhari, Advocate for Applicants
Mr. S. V. Natu, Advocate for Respondent Nos.1 to 9 (Caveator)

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CORAM : SHAILESH P. BRAHME, J.

DATE : 15.12.2025

PER COURT :-

. Heard both sides.

2. The appellant, original defendant, is assailing concurrent finding of facts in passing the decree of possession against him.

3. Respondent is a trust registered under the Maharashtra Public Trust Act, 1950 on 28.11.1953. Appellant was a tenant in Gat No.103 inducted in annual tenancy. Respondent trust was armed with certificate issued under Section 88-B on 25.09.1972 under Bombay Tenancy and

Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act'). Appellant was called upon to hand over possession by notice dated 13.06.1983 failing which RCS No.55 of 1984 was filed for possession.

4. Appellant contested the suit on the ground that the respondent trust and the office bearers had no locus to file suit. That, the appellant was a tenant on Tiller's day and certificate under Section 88-B was issued behind his back.

5. Trial Court decreed the suit on 22.06.2005. Being aggrieved, RCA No.07 of 2005 was preferred and it was also dismissed on 08.11.2011.

6. Learned counsel for the appellants submits that the notice dated 13.06.1983 is patently illegal and the decree passed by courts below is unsustainable. It is submitted that certificate issued under Section 88-B of the Act is bad in law as no notice was given to the appellant before issuing certificate. It is further submitted that Civil Court had no jurisdiction. The issue should have been referred to the Tenancy Court. The decree passed by courts below in this backdrop is without jurisdiction and therefore null and void. It is further submitted that appellant has become deemed purchaser as

he was in possession on Tiller's day.

7. Per contra, learned counsel for the respondent supports the impugned judgment and decree. He would submit that all aspects of the matter have been dealt with by the courts below. It is submitted that certificate under Section 88-B of the Act was not challenged before the competent forum under the tenancy Act ever after filing of the suit. It is further submitted that the trust was registered in the year 1953 i.e. before Tiller's day and it was entitled to have the certificate under Section 88-B. It is further submitted by implication of Section 88-B, of the protection and the privileges provided under Tenancy Act are not available to the appellant.

8. I have considered rival submissions of the parties. I have gone through the impugned judgment and decree passed by courts below. The certificate under Section 88-B was issued to the respondent-trust on 25.09.1972 under the Tenancy Act and it was not challenged by the appellant before the Appellate forum under the Tenancy Act. The present suit was filed in 1984. Thereafter also no endeavor has been made to challenge the certificate. By implication of Section 88-B, it is not open for the appellant to claim any rights or the privileges under the Tenancy Act as the provisions of

application of chapter III, VI and VIII shall stand excluded.

9. It is not open for the appellant to contend that certificate under Section 88-B was issued behind his back or it was granted without following the procedure of law. It has become final and binding upon the parties. Both the courts below have rightly dealt with this aspect of the matter.

10. The trust was registered on 28.11.1953 i.e. before the Tiller's day. It is entitled to receive the certificate under Section 88-B. In the wake of 88-B certificate, it is permissible for the respondent to institute suit for possession. The protection of the appellant under the tenancy Act is not available in the present case. It remained to be suit simplicitor for possession.

11. The validity of the notice demanding the possession has been dealt with by court below. I find no illegality or perversity in the findings.

12. The findings recorded by the courts below cannot be termed as perverse or illegal. No substantial question of law is found to exist in the appeal.

13. The Second Appeal is dismissed.

14. Pending Civil Applications, if any, stand disposed of.

15. After pronouncement of the judgment, learned counsel for the appellants prays for stay to the execution and operation of the decree passed by the Trial Court. It is submitted that the appellant is in possession since 1953.

16. The appellant has suffered decree of possession by Trial Court. The lower Appellate Court dismissed the appeal on 08.11.2011. The respondents-plaintiffs are aspiring for the possession since long. The appellant has not even bothered to secure stay in the High Court in the Second Appeal. No case is made out to protect their possession for the first time in the Second Appeal. The request is rejected.

(SHAILESH P. BRAHME, J.)