

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.344 OF 2022

WITH

INTERIM APPLICATION NO.2496 OF 2022

Shri. Krishnanand Narayan Londhe ...Appellant

Versus

Shri. Shankar Narayan Londhe ...Respondent

Mr. Sudhir Prabhu, Advocate for Appellant/Applicant.

CORAM: MADHAV J. JAMDAR, J.

DATED : 1st July 2025

JUDGMENT:

1. Heard Mr. Sudhir Prabhu, learned Counsel appearing for the Appellant.

2. In this Second Appeal, the challenge is to the legality and validity of the Judgment and Decree dated 29th December 2014 passed by the learned Joint C.J.J.D., Malvan in Regular Civil Suit No.9 of 2008 as well as to the Judgment and Decree dated 13th December 2021 passed by the learned District Judge-2, Sindhudurg. The said suit has been filed by the Respondent-Plaintiff seeking permanent injunction with respect to Survey No.30 (738), Pot Hissa No.2/5 admeasuring 0.182 R. Potkharaba

situated at Devbaug, Tal. Malvan. The learned Trial Court decreed the suit and the learned First Appellate Court confirmed the said decree.

3. Mr. Prabhu, learned Counsel submits that the following substantial questions of law arise in this Second Appeal.

- i. Whether both the Courts below were right in deciding the issue which was required to be dealt with and to be decided by the authority under the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 when jurisdiction of Civil Court is barred by Sections 85 and 85A of the said Act?
- ii. Whether both the learned Courts below were right in not considering the fact that Civil Court has inherent lack of jurisdiction and even in case of non-raising of that point it does not get jurisdiction to decide tenancy issue?
- iii. Whether the concurrent findings recorded by the learned lower Courts are without considering provisions of the Maharashtra Tenancy and Agricultural Lands Act and therefore without jurisdiction and bad in law?

4. It is the submission of Mr. Prabhu, learned Counsel for the Appellant that the suit property is tenanted property of the family of the Appellant (Defendant) and the Respondent (Plaintiff) and therefore, in view of Section 85 read with Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (“**Tenancy Act**”) the issue whether the family of the Appellant and the Respondent is tenant of the suit premises should have been referred to the Mamlatdar. He submitted that both the Courts have not taken into consideration provisions of the Tenancy Act and therefore both the impugned Judgments and Decrees are illegal.

5. Before considering the substantial questions of law raised by the Appellant, it is necessary to set out certain factual aspects:

i. The suit property is Survey No.30 (738), Pot Hissa No.2/5 admeasuring 0.18.2 R. Pot kharaba 0.02.6 R situated at Devbaug, Tal. Malvan (“**suit land**”).

ii. Admittedly, the adjoining land to the suit land bearing survey No.24 (736), Hissa No.19-B + 20-B is the ancestral tenancy property of the family of the Plaintiff and the Defendant.

iii. By registered Sale-Deed dated 7th January 1998, the Respondent-Plaintiff purchased the suit property as also tenancy

rights of vendors i.e. Bhaskar Tukaram Chindarkar, Smt. Mangala Madhusudan Sartandel, Smt. Vaishali Jaysing Methar and Mr. Suresh Tukaram Chindarkar for consideration of Rs.80,000/-.

iv. The Appellant-Defendant filed Regular Civil Suit No.97 of 2007 for declaration that the suit property is joint property of family of Plaintiff, Defendant and other brothers and also claimed injunction. After the temporary injunction application has been rejected the Respondent-Plaintiff withdrew the said suit.

v. The Plaintiff filed Suit bearing Regular Civil Suit No.9 of 2008 in the Court of Civil Judge, Junior Division, Malvan seeking permanent injunction against the Defendant. It is the contention of the Plaintiff in the Plaint that between the suit property and the adjoining ancestral tenanted property, boundary wall was existing, however, the Plaintiff destroyed the boundary wall and therefore the Suit has been filed seeking injunction.

vi. In the written statement, it is contended that the Suit land has been purchased by the Plaintiff for the joint family.

vii. The learned Trial Court has recorded finding that the Defendant has failed to prove that the Suit property has been purchased from joint family funds and that the Plaintiff has proved

that the suit land has been purchased by the Plaintiff independently. The Trial Court has also recorded finding that the Defendant has obstructed peaceful possession of the Plaintiff and therefore, granted relief of injunction.

viii. The learned Appellate Court has after analyzing the evidence on record held that the Plaintiff has purchased the permanent tenancy rights of the suit property from his own earning from the erstwhile tenants and it is the self-acquired property of the Plaintiff. The learned Appellate Court further held that the Defendant has failed to prove that the suit property has been purchased for the joint family and the Defendant has contributed Rs.25,000/- for purchase of the suit property.

6. The substantial questions of law raised by the Appellant-Defendant are required to be considered in view of above factual position.

7. As noted herein above, both the Courts by appreciating the evidence on record has recorded concurrent findings that the suit property is self acquired property of the Plaintiff and further that the Defendant has failed to prove that the suit land has been purchased from the funds of the joint family or other brothers have contributed for acquiring the said land. In fact, it is required to be

noted that the Regular Civil Suit No.97 of 2007 filed by the Appellant seeking said relief has been withdrawn by the Appellant. Thus, in effect the suit raising said claim has been dismissed as withdrawn.

8. In the light of above position, it is required to consider substantial question of law raised by the learned Counsel appearing for the Appellant.

9. It is the contention of Mr. Prabhu, learned Counsel for the Appellant that as the Defendant has raised the contention that the property is purchased in the name of the Plaintiff for the joint family and therefore the joint family *inter alia* consisting of the Plaintiff and the Defendant is the tenant of the suit property. It is his submission that the said question has to be referred by the Civil Court to the Mamlatdar for deciding the same, in view of Section 85 read with Section 70-B of the Tenancy Act. To substantiate said contention, Mr. Prabhu, learned Counsel relied on the full Bench Judgment of this Court in the case of **Rajaram Totaram Patel Vs. Mahipat Mahadu Patel**¹ as also the Judgment of the Supreme Court in the case of **Mudakappa Vs. Rudrappa**².

¹ 1967 69 Bom LR 282 / AIR 1967 Bom 408

² (1994) 2 SCC 57

10. In the Full Bench Judgment of this Court in the case of **Rajaram** (supra), it has been held that if the issue involves the decision of a question concerning whether the party to the suit is tenant, it has to be referred to the tenancy Court. In the case of **Mudakappa**, it has been held that the question whether the Appellant or joint family is the tenant, that question has to be decided by the learned Tribunal under Section 48-A read with 133 of the Karnataka Land Reforms Act, 1961 and the Civil Court has no power to decide the said issue.

11. However, the factual position as set out hereinabove clearly show that the suit property is acquired exclusively by the plaintiff by the registered Sale-Deed dated 7th January 1998. It is the only contention of the Defendant that the suit property has been acquired by the Plaintiff not exclusively but for the joint family *inter alia* consisting of the Plaintiff and the Defendant. Thus the question raised is not regarding the tenancy rights but whether the suit land has been acquired by the Plaintiff exclusively or for joint family. Both the Courts have concurrently recorded the finding that the Plaintiff has purchased the suit property through his own funds and exclusively and the property has not been acquired for joint

family or by the joint family. Thus, this is the case where the issues raised are not covered by the Tenancy Act.

12. Section 70-b of Tenancy Act on which Mr. Prabhu, learned Counsel for the Appellant relied on provides that for the purpose said Act i.e. the Tenancy Act, the Mamlatdar has jurisdiction to decide whether a person is or was at any time in the past, a tenant or protected tenant or a permanent tenant. Section 85 concerning bar of jurisdiction provides that 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. Thus, Section 70-B read with Section 85 of the Act provides that no Civil Court shall have jurisdiction to decide the issues for the purpose of the said Act i.e. Tenancy Act. In this particular case, the issue raised is whether the suit land has been purchased by the Plaintiff exclusively or the same has been acquired for the benefit entire

joint family or acquisition is by entire joint family in the name of the Plaintiff. Thus, it is clear that the issues raised are not under the Tenancy Act.

13. It is also required to be noted that the Appellant has filed Regular Civil Suit No.97 of 2007 for declaration that the suit property is common property of joint family of Plaintiff, Defendant and other brothers and also claimed injunction. After the temporary injunction application has been rejected the Respondent-Plaintiff withdrew the said suit. Thus, the said claim is deemed to have been rejected.

14. Accordingly, there is no substance in any of the substantial questions of law raised on behalf of the Appellant. Resultantly, the Second Appeal is dismissed, however, with no order as to costs.

15. In view of dismissal of the Second Appeal, nothing survives in the Interim Application, and the same is also disposed of.

(MADHAV J. JAMDAR, J.)