

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.294 OF 2018

WITH

CIVIL APPLICATION NO.641 OF 2018

1. Maruti Dnyanu Sawant (Shirgaonkar)
Since Deceased Through LRs.
 - 1A. Gorakshnath Maruti Sawant,
Age: 43 Years, Occu.: Agriculture,
 - 1B. Dwarkanath Maruti Sawant,
Age: 40 Years, Occu.: Agriculture,
 - 1C. Shakuntala Maruti Sawant,
Age: 70 Years, Occu.: Agriculture,
 - 1D. Narayan Namdeo Patil,
Age: 52 Years, Occu.: Agriculture,
 - 1E. Minakshi Manik Patil,
Age: 50 Years, Occu.: Agriculture,
All R/o. No. 1A to 1C, at Yedenipani,
Taluka : Walva, District : Sangli.
No.1D at Nerli, Taluka : Karvir,
District : Kolhapur.
No.1E at Padali, Taluka : Hatkanangale,
District : Kolhapur.
2. Bajarang Dnyanu Sawant (Shirgaonkar),
Age: 68 Years, Occu.: Agriculture,
R/At. Yedenipani, Taluka : Walva,
District : Sangli.

.....Appellants

Vs.

1. Ashok Bhimarao Patil,
Age: 58 Years, Occu.: Agriculture,
 2. Yashwant Bhimarao Patil,
Age: 54 Years, Occu.: Agriculture,
 3. Subhash Bhimarao Patil,
Age: 48 Years, Occu.: Agriculture,
 4. Vijay Bhimarao Patil,
Age: 38 Years, Occu.: Agriculture,
 5. Babutai Bhimarao Patil,
Age: 82 Years, Occu.: Agriculture,
Respondent Nos. 1 to 5 are
R/at Yedenipani, Taluka : Walva,
District : Sangli.
 6. Chhayatai Tanaji Patil,
Age: 57 Years, Occu.: Household,
R/At. Tujarpur, Taluka : Walva,
District : Sangli.
 7. Jayashree Ankush Chavan,
Age: 52 Years, Occu.: Household,
R/At. Kini, Taluka : Hatkanagale,
District : Kolhapur.
-Respondents

Mr. Nikhil N. Pawar, for the Appellants.
Mr. B. A. Walimbe, for the Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 19th SEPTEMBER 2025

JUDGMENT :-

1. The Appellants/original defendants impugn Judgment and Order dated 5th April 2017 passed by District Judge-2, Islampur in Regular Civil Appeal No.10 of 2013, thereby upholding Judgment

and Decree dated 21st December 2012 passed by Civil Judge Junior Division, Islampur in Regular Civil Suit No.289 of 2007.

2. Respondents/plaintiffs instituted suit for redemption of mortgage and mesne profit in respect of suit properties bearing Gat No.1144 and 1178 at village Yedenipani, Taluka Walwa, District Sangli. It is contention of plaintiffs that suit properties are their ancestral properties. It was in possession of Bhimarao Hindurao Patil, who died on 16th February 2020. The plaintiffs are his legal heirs. According to plaintiffs, during life time of Bhimarao, he mortgaged suit properties in favour of defendants by registered mortgage deed dated 14th May 1986 against loan of Rs.4,000/-. The said mortgage was for the period of 10 years. Possession was handed over to defendants from the date of mortgage. The plaintiffs requested defendants to accept amount of Rs.4,000/- and redeem mortgage, but defendants avoided. Hence, present suit is filed.

3. The defendants filed written statement and refuted plaintiffs' claim. They contend that in the year 1953-54. Bhimarao had given the land to predecessor of defendants namely Dnyanu Bhau Shirgaonkar as a tenant. He was cultivating the land. The name of

Dnyanu is recorded vide Mutation Entry No.8260. He paid *khand* to Bhimarao. Since then suit properties were in possession of Dnyanu as a tenant. The properties cannot be subjected to mortgage in contravention of tenancy laws. Tenancy rights of defendants cannot be extinguished on the basis of mortgage deed. It is further contention of defendants that Gat No.1178 is formed from Survey Nos.269/4 and 269/5. Out of Gat No.1178, 60 *gunthas* land is ancestral property of defendants and 29 *gunthas* is tenanted property. Similarly, Gat No.1144 is formed from Survey No.276/2+3, which is tenanted property. According to defendants, Mutation Entry No.8811 has been recorded in collusion with Circle Officer depicting the mortgage.

4. The trial Court framed issues based on pleadings of parties. The parties recorded their evidence. The trial Court after considering rival submissions concluded that suit properties are owned by plaintiffs and as per registered mortgage deed dated 14th May 1986, those were given in possession of defendants by predecessor of plaintiffs. Eventually, suit was decreed.

5. In an appeal filed by defendants bearing Regular Civil Appeal

No.10 of 2013, learned District Judge concurred with findings recorded by trial Court, so also allowed cross-objection filed by plaintiffs on the point of mesne profit and decreed the suit in toto.

6. Aggrieved defendants have filed present Second Appeal. Mr. Nikhil Pawar, learned Advocate appearing for Appellants submits that Mutation Entry No.8260 clearly depicts name of Dnyanu Shirgaonkar as tenant in property bearing Survey No.276/2+3 and 269/5. The properties continued in possession of defendants. However, taking into consideration a mistake in consolidation record depicting entry in the name of Bhimarao Patil, both the Courts have drawn wrong conclusion. He would contend that even plaintiffs have not disputed tenancy rights of predecessor in title of defendants. In that view of the matter, mortgage deed dated 14th May 1986 is in contravention of provisions of Bombay Tenancy and Agriculture Lands Act, 1948 (For short, '**B.T. & A.L. Act**'). Such a mortgage would not affect right of defendants/tenants.

7. Per contra, Mr. B. A. Walimbe, learned Advocate appearing for Respondents supports impugned Judgment and Decree. According to him, concurrent findings of facts recorded by Courts below need not

be disturbed in Second Appeal in absence of substantial question of law.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that plaintiffs are claiming ownership over the suit properties through their ancestor. The defendants are also accepting that suit lands are originally defendants' ancestral lands and Bhimarao Hindurao Patil was predecessor of plaintiffs. However, defendants' contention is that Bhimarao handed over possession to Dnyanu Shirgaonkar as a tenant, who was in possession of land since 1956. Therefore, the tenancy rights were created in favour of Dnyanu and they are in possession of suit properties on the basis of tenancy rights.

9. The plaintiffs' contention is that on 14th May 1986, Bhimarao executed registered mortgage deed in favour of defendants and handed over possession of suit properties against the loan of Rs.4,000/-. Since, they are ready to pay the amount, decree of redemption needs to be passed.

10. The moot question that arises for consideration in Second

Appeal is whether defendants' claim that Dnyanu Shirgaonkar was a tenant and therefore, defendants are in possession on the basis of tenancy rights can be accepted. The trial court as well as Appellate Court, on appreciation of evidence, observed that Mutation Entry at Exhibit 108 for the year 1963 depicts that in pursuance to order passed under Section 32P of the B.T. & A.L. Act, the land has been returned to land owner and name of tenant is deleted. Eventually, the name of defendants' predecessor is removed from record of rights since 1964-65, in relation to Survey No.269/5, 269/2, 276/2+3/1. Eventually, the name of Bhimarao Hindurao Patil-the predecessor of plaintiffs is continuously shown as owner and possessor. The Courts observed that long standing mutation entry has presumptive value. The defendants have failed to rebut such presumption. It is accordingly held that plaintiffs' predecessor Bhimarao was the absolute owner and tenancy rights of defendants' predecessor were extinguished since 1963-64.

11. Apart from aforesaid fact, the defendants' witness accepted the signatures on mortgage deed. Although, defendants are claiming that mortgage deed is bogus and fabricated document, the mutation record indicates that mortgage transaction was recorded vide

Mutation Entry No.7777. Since 1986, the entry as to mortgage was never challenged. Therefore, the defense, as raised, appears to be after thought.

12. One more observation is recorded by Appellate Court that on perusal of consolidation documents and statements of owners, it is observed that Consolidation Scheme was implemented in the year 1968. Survey No.269/4 was standing in the name of defendants' predecessor, however, it was given to Bhimarao Patil and Survey No.269/2 was standing in the name of Bhimarao Patil was given to defendant's predecessor. Accordingly, Gat No.1178 including Survey No.269/4 and 269/5 was formed. Therefore, the contention of defendants that Bhimarao Patil was unconcerned with land Survey No.269/4 is unacceptable.

13. In view of aforesaid observations, trial Court as well as Appellate Court are justified in holding that plaintiffs are owners of suit properties and entitled for redemption of mortgage dated 14th May 1986. The Appellate Court is justified in directing separate enquiry in respect of mesne profit as per Order 20 Rule 12 of Code of Civil Procedure.

14. In result, no substantial question of law arises for consideration in Appeal. Hence, Second Appeal stands dismissed.

15. In view of dismissal of Second Appeal, nothing survives for further consideration in Civil Application No.641 of 2018 and the same shall also stand disposed of.

(S. G. CHAPALGAONKAR, J.)

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RAJU
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