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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 651 OF 2017
WITH
CIVIL APPLICATION NO. 1123 OF 2017
IN
SECOND APPEAL NO. 651 OF 2017**

Shri. Gopal Krishna Kadam

.....Appellant

Vs.

Shrhi. Laxman Kanoji Parab

.....Respondent

Mr. Anilkumar Patil a/w Mr. S. R. Kadam, Ms. Zeel Jain a/w Mr. Digvijay A. Patil for the appellant

CORAM : GAURI GODSE, J.

DATE : 14th JANUARY 2025

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ORDER:

1. Heard learned counsel for the appellant. This second appeal is preferred by the plaintiff to challenge the concurrent judgments and decrees dismissing his suit for injunction.

2. Learned counsel for the appellant submits that the appellant is an agricultural tenant in respect of the suit property. He submits that the oral evidence was led by the plaintiff to support his contentions

regarding he being in possession as agricultural tenant. He submits that though defendant no. 7-Trust claimed to be owner of the suit property, no documentary evidence was produced by defendant no. 7 to support the theory of they being in possession of the suit property. He submits that in the absence of any documentary evidence produced by defendant no. 7, both the Courts erred in not accepting the oral evidence led by the plaintiff to support his pleadings regarding he being in possession.

3. Learned counsel further submits that the plaintiff had filed an application for issuing witness summons to his landlord, however, the application was rejected. He submits that the second appeal would therefore, require consideration by this Court on the ground of incorrect appreciation of the plaintiff's oral evidence on record. He submits that the second appeal would also raise substantial question of law on the appellant's entitlement of issuance of summons to his landlord to support his pleadings regarding he being in possession as agricultural tenant.

4. To examine the submissions made on behalf of the appellant, I have perused both the judgments. The documentary evidence

produced on record by the plaintiff indicates that name of defendant no. 7-Trust is entered in respect of the suit property. The oral evidence led by the parties is examined by both the Courts. On thorough examination of the evidence on record, concurrent findings are recorded disbelieving the plaintiff's case of being in possession of the suit property.

5. Admittedly, the plaintiff has not initiated any proceedings under The Maharashtra Tenancy and Agricultural Lands Act, 1948 for declaration of his tenancy rights on the ground of he cultivating the suit property as an agricultural tenant. I see no reason to disbelieve defendant no. 7's contention of ownership and possession as accepted by both the Courts based on the evidence on record. I do not see any illegality or perversity in the reasons recorded by both the Courts on the findings of facts disbelieving the plaintiff's case of being in possession.

6. The application for issuance of witness summons was rejected by the trial Court. However, in the first appeal, the plaintiff has not challenged the order rejecting the application for witness summons. Hence, for the first time in the second appeal, this Court is not required

to examine the plaintiff's prayer for issuance of witness summons.

7. The second appeal does not raise any question of law. Hence, the second appeal is dismissed.

8. In view of dismissal of second appeal, Civil Application No. 1123 of 2017 is disposed of as infructuous.

[GAURI GODSE, J.]