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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 402 OF 2018
WITH
CIVIL APPLICATION NO. 948 OF 2018
IN
SECOND APPEAL NO. 402 OF 2018**

Ananda Ramchandra Yadav

.....Appellant

Vs.

Shriniwas Yashwant Inamdar

.....Respondent

Mr. V. S. Talkute for the appellant

Mr. Prasad Avhad i/b Mr. Chetan Nagare for respondent nos. 1 to 3

CORAM : GAURI GODSE, J.

DATE : 20th JANUARY 2025

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ORDER:

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1. Heard learned counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the first Appellate's Court's decree. The trial Court granted a decree of injunction protecting the plaintiff's possession. The said decree is set aside by the first Appellate Court. Hence, this appeal by the plaintiff.
2. Learned counsel for the appellant submits that deletion of the revenue record in the name of plaintiff is incorrectly interpreted by the

first Appellate Court against the plaintiff. He submits that the entry in the revenue record would clearly indicate that the plaintiff has tenancy rights in respect of the suit property through his grandfather Mahadev Bhairu Yadav who was tenant of Jayvant Vyankatesh Inamdar. He thus submits that the revenue record which is discussed and relied upon by the trial Court, is erroneously disbelieved by the first Appellate Court by misreading the evidence on record. He submits that when the name of the plaintiff's grandfather was recorded in the revenue record as protected tenant, the plaintiff is entitled to protect his possession through his grandfather. He therefore submits that the first Appellate Court erred in setting aside the trial Court's decree. He thus, submits that incorrect appreciation of the evidence on record by the first Appellate Court is an important question of law, required to be considered by this Court.

3. I have perused both the judgments. The first Appellate Court has referred to the old revenue record standing in the name of Mahadev Vyankatrao Inamdar. The plaintiff claims tenancy rights through Jayvant Vyankatrao Inamdar and not through the defendants in whose name the 7/12 extracts are produced on record. The first Appellate Court refers to the consolidation scheme of the suit property i.e.

Survey No. 74/10 which is numbered as Gat No. 663 standing in the name of Yashawant Mahadeo Inamdar i.e. father of defendant nos. 1 to 3 and husband of defendant no. 4. Thus, by referring to the undisputed extract of consolidation scheme, the first Appellate Court held that the plaintiff failed to prove that he is tenant of Yashawant Mahadeo Inamdar. The first Appellate Court has referred to the admission by the plaintiff in his cross-examination that there were no proceedings or inquiry initiated under The Maharashtra Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act').

4. There is no dispute that the plaintiff's name recorded in the mutation entry 877 was subsequently deleted. Hence, in the absence of any evidence to support the plaintiff's contention of tenancy through defendants, the first Appellate Court has rightly set aside the findings recorded by the trial Court and dismissed the suit.

5. Learned counsel for the appellant relies upon the decision of this Court in the case of *Rahibai Ladkya Patil since deceased by Waman Narayan Patil v. Mathuradas Ramchandra Agarwal since deceased by L.Rs. Harish Mathuradas Agarwal and others*¹. He submits that the tenancy claim cannot be disbelieved based on the consolidation

¹ 2001(1) Mh.L.J. 242

extract. He, thus, submits that the legal principles settled by this Court in the case of ***Rahibai Ladkya Patil*** squarely applies to the present case. Learned counsel relies upon legal principles settled in paragraph 3 of the judgment. He submits that this Court held that under Section 31A of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 is not competent to change the status of the party. He submits that even in the present case, the entry in the consolidation scheme cannot be accepted to mean that the plaintiff's status as tenant is changed.

6. I have perused the decision in the case of ***Rahibai Ladkya Patil***. The observations by this Court in paragraph 3 are with reference to the facts of the case where there was a correction made by Settlement Commissioner. In the present case, the entry in the consolidation scheme is in the name of defendants' predecessor-in-title. The plaintiff's suit is dismissed on the ground that the documents relied upon by the plaintiff do not indicate that the plaintiff's predecessor-in-title claimed tenancy through defendants' predecessor.

7. In the present case, the defendants claim title which was supported by the consolidation entry with reference to their original

holding. There is also no dispute that the mutation entry in the name of plaintiff was also cancelled. Hence, in view of different facts of the present case, the observations in paragraph 3 of the decision in the case of ***Rahibai Ladkya Patil*** would not be of any assistance to the arguments raised on behalf of the appellant.

8. The evidence recorded by the first Appellate Court are based on appreciation of evidence on record. The first Appellate Court being the last fact finding Court has recorded finding of facts by examining the evidence on record. I do not find any illegality or perversity in the reasons recorded by the first Appellate Court. The submissions made on behalf of the appellant would require reappraisal of the evidence on record which is not permissible under Section 100 of Code of Civil Procedure, 1908.

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

10. In view of dismissal of second appeal, Civil Application No. 948 of 2018 is disposed of as infructuous.

[GAURI GODSE, J.]