BEFORE THE MEMBER (JUDICIAL), MAHARASHTRA REVENUE TRIBUNAL, BENCH AT PUNE.

Presided over by : V.B.Kulkarni, Member (Judicial)

No.TNC/REV/208/2007/P

Shri Krishna Raghu Mujumale,
R/o.Kondhanpur, Tal.Haveli, Dist.Pune.
…..Applicant

VS.

Krishna Blawant Mujumale
D/H—Shri.Chandrashekhar Krishna Mujumale & otrs.,
R/o.122/6, Swaraj Bungalow, Prabhat Road,
Erandwana, Pune-4.
..…Respondents

Revision Application U/s 76 of the B.T.& A.L.Act,1948.

Appearance :- Adv. Shri B.B.Bhargude for Revision Applicant
dv. Shri J.P.Dhaytadak for Respondents

DATE:- 23rd AUGUST, 2018

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Haveli Sub Dn.,Pune (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.14/2005, dt.2/11/2007, the aggrieved tenant has preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948

(hereinafter referred "the Act"), on the grounds more particularly set out in revision application. For the purpose of brevity and convenience parties hereinafter referred as the Plaintiff or the Defendant as the case may be as they were referred in original *lis* instituted in the Civil Court in RCS No.294/86, which is still pending in the Court CJJD Pune. Facts giving rise to the present revision application can be summarized as under.

2. The suit property is admittedly situated in three Villages. So far as the description of the suit properties, its acreage and boundaries are concerned, parties are not at variance. Furthermore, parties have not disputed the fact or otherwise more specifically admitted that the Defendant Shri.Krishna Balwant Mujumale, is the owner of the property.

With these short undisputed facts, one Krishna Raghu Mujumale, has filed RCS No.294/86 for the relief of perpetual injunction against the owner Krishna Balwant Mujumale in respect of suit properties. While filing the simplicitor suit of perpetual injunction the Plaintiff has specifically pleaded that he has in possession of the suit property as a lawful tenant since last 40-45 years. However, due to the poverty and ignorance of Law, neither he has initiated the proceedings to mutate his name in revenue record nor the Revenue Authorities have ever taken the cognizance of his actual lawful possession over the suit property. However, in the year 1985 acts of obstruction to the peaceful possession of the Plaintiff started at the hands of Defendant. The incident took place in Nov.1985 constrained him to lodge complaint against the Defendant and lastly, on the basis of cause of action dt.28/1/1986 the Plaintiff has filed suit for perpetual injunction against the Defendant.

3. The Defendant has contested the suit by filing written statement. He has specifically denied each and every averments made against him by the Plaintiff. So also specifically denied the physical possession of the Plaintiff over the suit property or even any interest therein, particularly in respect of alleged tenancy. As a part of pleadings the Defendant has specifically pleaded that though the Plaintiff has succeeded in seeking interim relief of temporary injunction in his favour upto Hon'ble High Court, still then the present Defendants are in possession of the suit property. The criminal proceedings u/s 145 of Cr.P.C. initiated by the Plaintiffs were also challenged before the Hon'ble High Court. Thus, with these specific pleadings the Defendant has prayed for the dismissal of the suit.

4. Pending the suit issues came to be framed as EXH-77. Issue No.1 framed at EXH.77 runs as under:

> Whether Plaintiff proves that he is in possession of suit property since 40-45 years as the tenant?

This Issue being purely issue relating to the relationship between the parties as regards the agricultural lands within the ambit of the provisions of B.T.& A.L.Act, 1948, the Civil Court has made a reference thereof to the Tribunal u/s 85A of the Act. After the receipt of reference through Civil Court, the proceedings came to be registered as Îú.ŸÖÆüú/¾Ö¿ÖÃ/5/2004. Ld.trial tribunal has conducted the proceedings by offering adequate opportunity to produce the documentary evidence and to lead oral evidence in support of issue raised by them before the Civil Court, which came to be referred to the Tribunal. After considering the documentary evidence placed on record and the evidence laid by the parties, the Ld.trial tribunal come to the conclusion that the Plaintiff has proved his possession over the suit property as the tenant and accordingly answered the Issue in Affirmative.

5. Being aggrieved by the said judgment & order the aggrieved landlord has preferred the tenancy appeal before the SDO Pune. The tenancy appeal No.14/2005 came to be decided on merit, whereby, the order passed by Ld.trial tribunal has been reversed and the Ld.appellate tribunal has held that the Plaintiff has failed to establish legal relationship of landlord & tenant in respect of the suit lands and accordingly answered the Issue in Nagative.

6. Being aggrieved by the said judgment & order the aggrieved tenant has preferred revision by invoking the provisions u/s 76 of the Act, on the grounds more particularly set out in revision application. After perusing the R&P received from both the tribunals below, in addition thereto the documents filed by the respondents pending the revision and after giving anxious thought to the oral submissions made by Ld.Adv.Shri.Bhargude, for the revision petitioner & Ld.Adv.Shri.Dhaytadak for the respondent, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	Points	**Findings**
1.	Whether the judgment & order passed by Ld.appellate tribunal reversing the finding recorded by Ld.trial tribunal is proper, correct and	Affirmative

	legal one?	
2.	Whether the judgment & order under revision calls for interference therein through this Tribunal within its limited jurisdiction of interference?	Does not survive

Reasons

7. Point No.1&2: After perusing the record from trial tribunal, it has become evident that, for the first time through wahiwat proceedings in file No.Wahiwat/SR/18 by judgment & order dt.12/8/1986 the name of the Plaintiff came to be recorded in the column of cultivation by lawful means. As per the provisions of law that proceedings were conducted as per the provisions of Maharashtra Land Revenue Record of Rights and Registers (Preparations & Maintainance) Rules, 1971, wherein the issue of relationship is not required to be decided. Any how, after raising the dispute of column of cultivation and by judgment dt.12/8/1986 the entry in the name of Plaintiff got recognition of the Law. Now, while deciding the issue at hand the Tribunal has to keep in mind the definition of word "tenant" given in the Act. In order to establish the tenancy by lawful means either it should be come within the ambit of deemed tenancy i.e. tenancy recognized prior to *tillers' day.* Such recognition is ever based upon entries made in tenancy register and consistent reference thereof in the column of cultivation as the tenant in possession in either of the mode of cultivation as recognized under the provisions of Revenue Manual written by Anderson. It is well settled principle of law, that the lawful tenancy is ever recognized by the mode of cultivation as 3,4 or 5. Rit-2 is a lawful cultivation by the owner through servant which does not create any relationship of tenancy in favour of the person, who found possession at the material time. Herein this case, though the name of the Plaintiff is appearing in the column of cultivation for certain years i.e. under the garb of Mode-2 and not in form of Mode-3,4 or 5 as the case may be. Not only that, but, there is no consistent evidence that the Plaintiff was ever in possession as the tenant in possession prior or on the date of *"tillers' day"* as there is no tenancy record to that effect. In the 7/12 extract for the Gat No.520 there is a reference in the column of other rights in the name of Krishna Raghu Mujumale. Except that entry nothing is on record in respect of the other lands, that the tenancy was ever recognized in favour of Krishna Raghu Mujumale at any point of time in respect of the other lands. Not only that, but, even for the Gat No.520 the cultivation is shown in the name of 'Khud' and showing the mode of cultivation as Rit-

1, that consistently upto 1985-86. Even after verifying the consolidation statement as per Rule-9(3), 9(4) there is no reference of tenancy rights in favour of Plaintiff at the time of consolidation. In short, there is no *'iota of evidence'* of acceptable nature on record to infer the relationship of tenancy in favour of the Plaintiff on or prior to 1/4/1957. Therefore, there is no question to draw inference in respect of the deemed tenancy, merely on the oral pleadings put forth by the party. Nowhere in the pleadings or evidence the Plaintiff has given details of tenancy as to when it was started, with whom it has been started, which mode of cultivation, rent etc. It is pertinent to note here that, certain land revenue receipts on record, but, payment of land revenue without the consent of the landlord is not sufficient to draw inference about the relationship of valid tenancy and i.e. prior to 1/4/1957.

8. Now, so far as the oral evidence placed on record to establish the plea of tenancy put forth before the Civil Court, it is pertinent to note here that, the tenant himself has not entered into the witness box. On behalf of him his son named, Kashinath Krishna Mujumale, has appeared in the witness box as POA. After going through the oral testimony of this witness, it amply suggests that his evidence is entirely hearsay, without having personal knowledge about the tenancy prior to 1/4/1957. The relevant admissions to that effect given in cross-examination are as under:

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These evidentially admissions are sufficient to observe that there is no *iota of evidence'* about the existence of tenancy relations on or prior to 1/4/1957.

9. Once it is found that the tenant has failed to establish the tenancy as on 1/4/1957 or prior to that, the case is gone out of scope of deemed tenancy. Therefore, the Plaintiff ought to have plead and prove the tenancy relationship within the ambit of contractual tenancy as required by Law. On this touchtone, there is no *iota of evidence'* to that effect placed on record. Therefore, though during the local inspection under the wahiwat case even prior to the suit, Plaintiff was found in possession does not sufficient to recognize the same as the possession of the tenant within the meaning of Sec.2(18) of the Act. In support of above observations I may keep reliance on the following three precedents.

(i) ***Hanumant Vs. Babasaheb, AIR 1996-SC-223.***
(ii) **Mahadeo Vs. Ramchandra, 1990 MhLR(2)-466**
(iii) **Maruti Vs. Sulbha, 2007(1) MhLJ-102**

The propositions of law laid down in these precedents can be summarized as under-

> "*Burden is on the tenant to establish his lawful possession and relation as tenant with the landlord. Mere entries in ROR and that too without notice to the landlord or payment of land revenue without notice to the landlord or its acquisance by the landlord cannot establish tenancy. No pleadings & evidence of commencement of tenancy produced on record, then bare pleadings will not be helpful to extend the benefit of Section-4 of the Act. Even in collusive proceedings in between landlord & tenant against the purchaser without entries in revenue record or document of rent note plea of tenancy is rejected."*

10. Furthermore, it is pertinent to note here that Ld.advocate for the respondent has tried to call upon the attention of this Tribunal towards the M.E.No.784, which is appearing in the 7/12 extract for Gat No.520. But, the said mutation entry was not before the Ld.trial tribunal. However, before the Ld.appellate tribunal, same is in relation of encumbrance of loan of society and not in respect of the tenancy relationship in favour of the present Plaintiff.

11. In addition thereto, during the cross-examination POA for the Plaintiff has specifically admitted the fact that land receipts are not in

their possession or even they have not ever paid rent receipts to the landlord, as……´ÖÖ—Öê ¾Ö›üß»Ö æúôû ´ÆüÖæ-Ö •Ö´Öß-Ö ¾Ö×Æü¾ÖÖ™üßŸÖ †ÖÆêüŸÖ µÖÖ“ÖÖ »Öê Öß ¯Öã¸üÖ¾ÖÖ -ÖÖÆüß.

These evidentially admissions are sufficient to hold that there is no documentary evidence in respect of the plea of the tenancy raised by the tenant for the first time in the suit, wherein reference has been made by the Civil Court. Once the plea of tenancy goes out of the ambit of deemed tenant, the person who intends to establish the relationship of tenancy after 1/4/1957 has to plead and prove the existence of the tenancy in reference to the lease as per the provisions of T.P.Act. In short, there must be a legal document of lease giving the details of tenancy and mode thereof. As referred supra, there is no documentary evidence to that effect. As such, after perusing over all entire documentary evidence on record, I do find that the Ld.appellate tribunal being the last fact finding tribunal, has rightly re-appreciated the entire evidence before him and come to the conclusion that though the Plaintiff found in possession, his possession cannot be recognized as the tenant within the meaning of the Act. Therefore, the answer of Issue referred by the Civil Court, recorded by Ld.appellate tribunal based on sound reasonings in support thereof do not call for interference therein through this Tribunal. Suffice to say that though the actual physical possession of the Plaintiff over the suit property has been consistently proved either in wahiwat case or even in the proceedings u/s 145 of Cr.P.C. and reached to its finality upto Hon'ble High Court. Still then that finding is not sufficient to record the finding of lawful relationship of tenancy since for the period more than 40-45 years as pleaded by the Plaintiff. It is well settled principle of law, that the party is bound by his pleadings and mere pleadings will not take the place of proof unless the evidence is placed in support thereof. Once ample opportunity of cross-examination is given and admission of lack of documentary evidence is proved, I do find that the finding recorded by Ld.appellate tribunal is consistent, proper, correct and legal one. Therefore, same does not call for interference therein. With these observations, I answer the 'Point No.1 in Affirmative & Point No.2 as per final order' "does not survive" and proceed to pass the following order.

ORDER

Revision application stands dismissed.

The judgment & order passed by Ld.appellate tribunal in Tenancy Appeal No.14/2005, dt.2/11/2007 is hereby confirmed.

Certified copy of judgment & order be sent to CJJD Pune, in compliance of Sec.85(2) of the Act, so as to act according to Law and to take further steps in the trial of the suit.