

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

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

No.TNC/REV/214/2007/NS

Shri Yadu Keru Gade,
D/H---

- a) Uttam Yadu Gade
- b) Kamal Yadu Gade
- c) Vijay Yadu Gade
- d) Ratnaprabha Ganpat Kamble

All R/o.Bhanang, Tal.Javali, Dist.Satara.

.... Applicants

VS.

1) Shri Dashrath Dattagiri Gosavi

D/H---

- a) Vijaya Dashrath Giri
- b) Chandrakant Dashrath Giri
- c) Chhaya Santosh Giri
- d) Ranjana /Madhavi Manohar Gosavi
R/at- of Khake Building no. 7,
Room no. 48, 2nd Floor, Dadar, Mumbai-28

2) Gangaram Tukaram Agunde

D/H---

Manumant Gangaram Bhosale (Agunde)
R/o. Bhanang, Tal. Javali, Dist. Satara

3) Krishna Tukaram Chikane (D . H.)

Shankar Krishna Deshmukh (Chikane) (D . H.)

- a) Sanjay Shankar Deshmukh
- b) Ajay Sankar Deshmukh

4) Bhiku Keru Gade (D. H.)

Malati Dashrath Gade

5) Antu Keru Gade (D. H.)

Sampat Antu Gade (D. H.)

Santosh Sampat Gade

of Bhanang, Tal. Javali, Dist. Satara _____ **Opponent**

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

Appearance :- Adv. Shri B.B.Bhargude for Revision Applicant
Adv. Shri D.V.Shinde for Respondents

DATE:- 7th MARCH, 2017

JUDGMENT

1. Being aggrieved by the judgment & order passed by the appellate tribunal i.e. Sub-Divisional Officer, Satara Sub Dn., Satara (hereinafter referred as the "SDO") in Tenancy Appeal No.59/88, dt.30/8/2007, the aggrieved appellant preferred the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"). Parties hereinafter referred in the same sequence and chronology in which they were referred before the Civil Court, Medha, in RCS No.6/89 as the Plaintiffs or the Defendants as the case may be. The facts giving rise to the present old */is*, summarized as under.

2. The suit property more particularly and sufficiently described in para-1 in the Plaint from RCS No.6/89 was originally owned by the father of the Defendant No.1. He has sold the suit property to the other Defendants through sale-deed dt.2/2/1955. There was an agreement between the parties to the deed, for re-conveyance of the sale-deed and it was agreed amongst them, that after the repayment of Rs.2000/- the property would be re-conveyed to the original vendor / Plaintiff. However, Defendants have failed to keep their words, despite of issuance of suit notice. Therefore, the circumstances constrained the Plaintiff to file RCS No.116/56 for re-conveyance of deed and for possession of the suit land against the Defendants. The suit came to be hotly contested amongst the parties, upto Hon.High Court. Through the Judgment and Decree modified by the Hon.High Court in second appeal, the Decree has been passed against the Defendants for re-conveyance of deed and for the possession of the suit property to the extent of 2/3rd portion from the suit property. The said Decree put in execution by the successful Plaintiff. During the pendency of R.D.No.110/66 Defendants have filed a fresh suit i.e. RCS No.317/69 (new 6/89) against the Decree holder in RCS No.116/56. While presenting RCS No.317/69 (new 6/89) the Plaintiffs have sought relief for declaration to the effect, that Decree under execution in R.D.No.110/66 is nullity and should not be executed against them and in that consequence sought the relief for permanent injunction against the Defendants / decree holder in RCS No.116/56. Pending the suit in RCS No.6/89 (new) pending on the file of CJJD Medha, CJJD found it necessary to propose three statutory issues within the ambit of Sec.85A of the Act and to make its reference to the tribunal (ALT) for adjudication, as the tribunal is the only competent authority decide such issues. The relevant issues framed by CJJD, where upon reference was called for, if quoted here, that will certainly help to make it easy to read the judgment as whole, in its context.

3. After receipt of the reference through Civil Court, the proceedings came to be registered as reference file No.2/72 before the ALT. The ALT decided the application by his judgment & order dt.30/4/70 holding that the Plaintiffs are not the tenants over the suit property and recorded 'negative findings' against the three issues. Being aggrieved by the said judgment & order, one Bhiku-POA for the

co-Plaintiffs preferred a Tenancy Appeal No.80/74 wherein the present Petitioner in revision applicant was added as Opponent No.10. The said Tenancy Appeal No.80/74 came to be disposed off being withdrawn by order dt.12/5/87. After the withdrawal of the appeal by appellant Bhiku Keru, the Respondent No.10 therein, who is the present Revision Petitioner has filed Tenancy Appeal No.59/88 and thereby, challenged the order passed in Tenancy Appeal No.80/74. The said appeal came to be decided by judgment & order dt.29/7/95. The Ld.appellate tribunal hold that in view of the judgment & order passed in Tenancy Appeal No.80/74 by its withdrawal, in new principle of res-judicata, dismissed the same. Against the said dismissal of appeal the aggrieved appellant preferred the revision application No.NS/IX/2/96 before the MRT. The said revision application was allowed by the then Member, MRT and thereby, remanded the matter for re-hearing of appeal to the Ld.appellate tribunal on merit. After remand, the SDO again re-considered the material placed before him and come to the conclusion that appeal being devoid with merits deserves to be dismissed and accordingly passed the judgment & order dt.30/8/07. Being aggrieved by the dismissal of the said appeal, original Defendants No.3 in the suit pending before the Civil Court has moved the present revision application by invoking the provisions of Sec.76 of the Act on the grounds more particularly set out in the revision application.

4. After appearance of both the parties before the Tribunal, R&P from both the tribunals below were called and made available for the perusal of this Tribunal. Heard Ld.Adv.Bhargude for the Revision Petitioner and Ld.Adv.Shinde for the Respondents at length. After perusing the R&P from both the tribunals below and submissions made by respective Ld.advocates before this Tribunal, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

<u>Points</u>	<u>Findings</u>
1. Whether on facts Plaintiffs have proved their right of tenancy over the suit property as contested in RCS No.6/89 (new) ?	Negative
2. Whether the judgment & order passed by the tribunals below, which are in form of concurrent in nature calls for interference therein either on facts or on any legal ground raised in the revision application ?	Negative

Reasons

5. **Point No.1 :** At the outset of the discussion, it will not be out of way to state here that the dispute between the parties in respect of possession over the suit property is pending in the court of law since 1956 onwards. In first round of litigation present Defendant, who was the original owner succeeded in obtaining decree for partition and possession in RCS No.116/56, which reached to its finality after the final verdict given by the Hon.High Court. The present suit, RCS

No.6/89(new) pending on the file of CJJD Medha, came to be filed after the execution moved by the successful party i.e. decree holder in RCS No.116/56. In the above context, I would like to state here that, when the *lis* has been based upon reference made by the Civil Court u/s 85A of the Act, it was necessary to find out and see, as to whether the sufficient pleadings are put forth to assert and establish the relationship of landlord & tenant between the parties to the suit. For that purpose keen perusal of pleadings put forth in RCS No.6/89(new) has to be considered. After going through the entire pleadings from the plaint RCS No.6/89(new), I do find that except assertion of tenancy and i.e. in form of *protected tenant* nothing has been pleaded as to the mode of creation of tenancy, particularly in respect of with whom the tenancy was created, by whom it was created, what was the mode of rent or mode of cultivation, either it was 'batai' or on 'cash' or 'mixed mode of cultivation and pleadings from plaint of RCS No.6/89(new) nowhere find out place of such material pleadings, which is based on final verdict recorded in earlier RCS No.116/56. In short, as a basic requirement the Plaintiffs have utterly failed to satisfy the minimum requirements required for making a reference u/s 85A of the Act. In support of above observations I may keep reliance on the precedent laid down by our Hon.High Court in the case of ***Pandu Yedurkar Vs. Anand Patil***, reported in 1974 Mh.L.J.548. The preposition of law laid down therein can be summarized as under :-

"When a plea is made by the Defendant containing that he is a tenant, the court should hesitate to frame such issue unless the Defendant is able to give particulars showing (i) the time as to when it was created (ii) by whom and with whom it was created (iii) mode of paying rent and other materials therefore. Normally the rules of pleadings requires that there are the minimum particulars which the parties must furnish before asking the court to frame the issue of tenancy."

6. I have gone through the above precedents very carefully and do find that the guidelines laid down therein certainly helps me to hold that, herein this case, while moving a subsequent *lis* in form of anti-clockwise litigation by the same party, they have failed to plead sufficient details about the alleged tenancy. Not only that, but, the Plaintiffs have not pleaded the existence of any particular independent revenue document in support of them to establish the tenancy, except the entries in the column of cultivation. It is well settled principle of law that, if the source of tenancy is not disclosed and established, then mere existence of continuous entries in the column of cultivation will not sufficient to establish the tenancy. Admittedly, though the Plaintiffs have pleaded their right of tenancy as a *protected tenant*, there is no entry of such right in the column of "other rights", which could recognized the nature of possession of the Plaintiffs over the suit property as a tenants in possession prior to the "*Tillers Day*".

7. In support of above observations, I may keep reliance on the precedent laid down by Hon.Supreme Court in case of *Hanmant Vs. Babasaheb Londhe*, reported in AIR 1996, SC-223. The preposition of law laid down therein by Hon.Supreme Court can be summarized as under :-

"Burden is on the tenant to establish his lawful possession and relationship as a tenant with his landlord. Mere entries in ROR and that too without notice to the landlord or payment of land revenue without notice or its acquiescence by landlord cannot establish tenancy."

8. By following the rule of law laid down therein, I hold that mere entries in the column of cultivation are not sufficient to establish the alleged tenancy. Admittedly, except the entries in the column of cultivation there is no certification of tenancy as such in the tenancy register in favour of the Plaintiffs at any point of time.

9. Secondly, it is pertinent to note here that the present Plaintiff No.1 to 3 in RCS No.6/89(new) were the contesting Defendants No.3 to 5 in RCS No.116/56. By taking the note of pleadings put forth by contesting Defendants No.3 to 5, who are the present Plaintiffs, in earlier suit, the Civil Court has framed issue of jurisdiction in the light of plea of tenancy raised. However, pending the said earlier suit the contesting Defendants have not pressed the plea of tenancy, waived the same by presenting purshis EXH.38 and thereby, proceeded with the trial of RCS No.116/56. The matter has not ended here only, but, the same has gone up to Hon.High Court and the contesting Defendants in RCS No.116/56 who are the present Plaintiffs have not raised the objection regarding the deletion of Issue No.6 in earlier suit, but, proceeded with the trial and accepted the final verdict given by the Hon.High Court . In the above context, it will be helpful to quote here the relevant Issue No.6 from RCS No.116/56 and reasonings recorded by trial court while passing the judgment & decree dt.30/9/57 as under :-

Issue	Findings
No.1 to 5 -----	-----
No.6: Do Defendants 3 to 5 prove that they are tenants of the suit land and hence this Court has no jurisdiction to award its possession ?	Deleted as not pressed vide Ex.38

10. In view of the above findings, facts become most crystal clear that the present Plaintiffs have waived their right of plea of tenancy in earlier civil suit between the same parties, in respect of same subject matter and same has been reached to its finality. In that context, lack of pleadings in the present suit about the details of alleged tenancy plays vital importance and whichever goes against the interest of present Plaintiffs.

11. Thirdly, one more interesting aspect which took place, pending the present revision proceeding is that, in the first round of litigation of the reference ALT has passed the order rejecting the plea of tenancy of present Plaintiff over the suit property by order dt.30/4/70. Tenancy Appeal No.80/74 which was presented by Bhiku in the capacity of Manager and wherein the present Revision Petitioner was the Respondent No.10, same Tenancy Appeal No.80/74 came to be withdrawn by appellant-Bhiku Keru by order dt.12/5/87. At this juncture I would like to make it clear that inspite of presenting of fresh Tenancy Appeal No.59/88 after the withdrawal of Tenancy Appeal No.80/74 it was not open for the Respondent No.10 to move fresh Tenancy Appeal No.59/88, but he could have an option to get the

matter restored and to pray transposition of his status as the appellant so as to proceed with the matter. But, he has not chosen this remedy and pull on the litigation by taking advantage of his possession over the suit property, as the obstacle to the decree passed in RCS No.116/56 which was for possession against him moved by the successful decree holder. This is the most unfortunate event giving rise to the present *lis*.

12. Fourthly, after examining the judicial orders passed by the Ld.appellate tribunal, in the light of directions given by MRT Pune, it is pertinent to note here that the matter was remanded to the Ld.appellate tribunal, wherein the present applicant was only interested as contesting party. He has not chosen right of fair trial so as to exhaust the same by producing sufficient evidence in support of his plea, particularly in the light of withdrawal of appeal by other co-interested persons Bhiku Keru and others. After perusing the judgment & order passed by Ld.appellate tribunal, which is under revision, I do find that even after the order of remand passed by the MRT dt.30/8/2007, there was no change either in oral or documentary evidence, which is available before the ALT, while deciding the original proceedings i.e. tenancy reference No.2/72. In that context, it is pertinent to note here that the plea of tenancy raised by and that is by ignoring the disputed sale-deed dt.2/2/55, through which purchaser thereunder came in possession of the suit property through the original owner. So also tried to raise just to continue the subsequent *lis* i.e. RCS No.6/89(new), which against the provisions of law and findings reached to its finality in the decree under execution. On that touchstone, after going through the entire judgment passed by ALT dt.30/4/70, I do find that the ALT has rightly appreciated all facts and circumstances involved in the matter and come to the legal conclusion that if the source of possession is based on sale-deed accompanied with the separate agreement in form of right of re-purchase, such right cannot be converted into the right or the tenancy. On that touchstone, I do find that the ALT who has decided tenancy ref.No.2/72 by order dt.30/4/70 is based on sound reasonings on facts, as to why and how the present Plaintiffs have utterly failed to establish the tenancy right within the meaning of definition of tenant and mode of tenancy recognized therefore.

13. Last, but, not the least, point which I would like to quote here is that, all the proceedings wherein the tenancy reference has arisen, this Tribunal constituted under the Special Act. This Tribunal has no jurisdiction to record its findings on maintainability of RCS.No.6/89, but, while considering the bonafides on the part of the present Plaintiff, at the outset I would like to make it clear that except present applicant in revision application other co-plaintiffs have already withdrawn them from the dispute of *lis* and the present Revision Petitioner Yedu only proceeded with the trial since after 12/5/87 onwards and tried to prolong the issue of delivery of possession as per the findings recorded by the Civil Court in favour of the successful Plaintiffs in earlier suit. In that context, without touching to the powers of Civil Court to give the verdict of the maintainability of the suit, I would like to refer here the substantive provisions of Sec.47, whereby, it was necessary to consider as to why the issue of tenancy raised which has been already waived in earlier suit and if parties to both the *lis* i.e. earlier and subsequent if are same, is not tenable in eye of Law. In that context also, tenancy tribunal may declined to

entertain the reference being based upon vague and flutrous plea of tenancy just to prolong the delivery of possession, so as to keep the successful party away from the fruits of the decree. In that context, without recording findings about the maintainability of the suit by this Tribunal, I would like to quote the only relative part of Sec.47 of CPC, which runs as under :-

Sec.47 of CPC:

"Questions to be determined by the Court executing decree.- All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit."

14. The plain reading of this provision itself highlight as to how the Plaintiffs have filed fresh suit by ignoring the mandate of the Code and succeeded in prolonging the delivery of possession in favour of the successful party just with ulterior motive and nothing more.

15. Herein this case also the present Plaintiff No.4, who is the Revision Petitioner before this Tribunal was the Defendant No.5 in previous civil suit No.116/56. The subject matter of the suit is the same, litigating parties were also disputing the claim of possession on the same documents, on which basis earlier suit was based. In short, reference of tenancy issues in RCS No.6/89(new) u/s 85A of the Act, is not sustainable in the light of findings of Issue No.6 recorded in RCS No.116/56 which has reached to its finality between the parties. Under these circumstances, I do find that the present Revision Petitioner has unnecessarily prolonged the act of delivery of possession in favour of the successful decree holder by raising flutrous plea of tenancy, for which I do find it necessary to saddle the Petitioner with substantive cost.

16. With these observations, I answer the Point No.1 in 'negative' and thereby, confirm the findings recorded by ALT in respect of issues referred by Civil Court to the tribunal in 'negative'.

17. In the light of observations made supra and findings recorded for the Point No.1, I do find that either on facts or even on the point of law, the judgment & order passed by the Ld.appellate tribunal does not call for interference within the limited revisional jurisdiction of this Tribunal. On the contrary, both the judgment & orders passed by the tribunals below being based on sound reasonings and principle of law should have to be sustain as it stands whereby, the claim of tenancy of the Plaintiff over the suit property came to be rejected since beginning. With these observations, I answer the Point No.2 in 'negative' and proceed to pass the following order.

ORDER

The revision application stands dismissed with cost.

The judgment & order passed by ALT Jaoli in court reference No.2/72, arising from RCS No.6/89(new) pending on file of CJJD Medha dt.30/4/74 and the

judgment & order passed by the Ld.appellate tribunal i.e. SDO Satara in Tenancy Appeal No.59/88, dt.30/8/2007 is hereby confirmed.

The Petitioner is hereby directed to pay special cost of Rs.20,000/- to the successful Respondent i.e. decree holder in RCS No.116/56 within three months from today. Failure to which, the certified copy of this judgment & order be sent to the Collector, Satara, with direction to recover the amount of costs from the Petitioner as arrears of land revenue and to pay the same to the successful Respondent in the present case and shall report the manner in which the order has been duly complied within six months from the receipt of copy of judgment & order of this Tribunal.

Certified copy of judgment & order be sent to the CJJD Medha, Dist.Satara, before whom the proceedings of RCS No.6/89(new) are still pending for awaiting of the findings of tenancy tribunal against the tenancy issue raised in the suit and to act accordingly.

R&P called from the tribunals below be sent back immediately.

Intimation of this order be sent to both the parties & lower tribunals.