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

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

No.MRT/KP/157/89

1) Vasudeo Ganesh Kulkarni
2) Balkrishna Ganesh Kulkarni
   Both R/o.2242/A, Kolhapur.
3) Rajaram Mahadeo Powar
   R/o.Digawade, Tal.Panhala, Diost.Kolhapur.
4) Smt.Subhada Vijay Joshi
   R/o.Radhakrishna Hsg.Soc.,
   Opp.Deccan Spinning Ichalkaranji,
   Dist.Kolhapur. .... Applicants

VS.

Dnyanu Gopala Power
D/H---
Vilas Dnyanu Powar & otrs.,
R/o. Digawade, Tal.Panhala, Dist.Kolhapur. .... Respondents

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

Appearance :- Adv. Shri Mane for Revision Applicants.
Adv. Shri Nerle for Respondents

DATE:- 10th JANUARY, 2017

JUDGMENT

1. The applicants have presented the present revision application by invoking the provisions of Sec.76 of B.T.& A.L.Act, 1948 (hereinafter referred "the Act") against the judgment & order passed by the appellate tribunal i.e. Sub-Divisional Officer, Shahuwadi Sub Dn., Kolhapur (hereinafter referred as the "SDO") in Tenancy Appeal No.2/87 on the grounds more particularly set out in revision application. Parties hereinafter referred in the same sequence and chronology in which they were referred before the ALT Panhala, in T.C.No.32/83, as the applicants or the respondents as the case may be. The facts giving rise to the present revision application can be summarized as under.

2. One Ganesh Kulkarni was the original owner of the land S.No.194 i.e. Gat No.485 adm.3H.99.7R. situated at Village Digawade, Tal.Panhala. The applicant Dnyanu Gopala Powar filed an application before the ALT on 25/8/83 for

declaration in his name as the tenant in possession of the suit property u/s 70(b) of the Act. While moving the application the applicant / tenant has specifically contended that the Opponents are the owner of the suit property and he is in possession of the suit property since last 27-28 years as a tenant in possession. The tenancy agreement is oral and no rent receipts were ever obtained through the landlord having cordial relations interse between the family of applicant and his landlord. However, 1½ year before filing of the application, disputes started between the parties, whereby, circumstances constrained the applicant to verify his name in the column of cultivation in the suit property and he found that his name is also not appearing in revenue record, such as 7/12 extracts particularly in the column of cultivation. However, the applicant is in actual physical, lawful possession over the suit property since long prior to the *Tillers Day* and is having several documentary evidence in form of land receipts, sale of agriculture produce from the suit property, levy receipts, electricity bills etc., In addition thereto the applicant has specifically pleaded that the co-owner of the suit land Arvind has sold 1/3rd share in the suit property illegally in favour of Opponent No.9 on 9/1/81 without having right to part with the possession or otherwise to put his vendee in actual physical possession on the strength of so called sale-deed dt.9/1/81. All these facts constituted cause of action for filing action u/s 76 of the Act, so as to have declaration in favour of the applicant in respect of tenancy over the suit property as against of the Opponents.

3. The Opponents have appeared and contested the matter before the trial tribunal contending that the applicant has no concern whatsoever with the suit property in any manner. They have specifically denied the possession of the applicant over the suit property in any form and also denied the alleged relationship of landlord and tenant between them. With these contentions, the Opponent / landlords prayed for the dismissal of the application.

4. The matter arising out of the application moved by the applicant, registered as T.C.No.37/83. After full-fledged enquiry ALT came to the conclusion that the applicant has failed to establish his lawful possession over the suit property, having relationship with the Opponents as the tenant and landlord interse. For the reasons recorded in the judgment & order dt.19/9/86 ALT Panhala rejected the application.

5. Being aggrieved by the said judgment & order passed by the ALT, the aggrieved tenant moved the Tenancy Appeal No.2/87 before the SDO Shahuwadi. The said appeal decided in presence of both the parties and came to be decided on merit. The appellate tribunal Ld.SDO come to the conclusion that, oral evidence laid and documentary evidence proved is sufficient to establish the relationship of landlord and the tenant between the applicant and Opponents and thereby, by setting aside the order of ALT, allowed the application moved by the applicant / tenant declaring tenancy rights in his favour over the suit property by order dt.15/5/89.

6. Being aggrieved by the said judgment & order passed by the SDO, the aggrieved landlords have preferred revision application and thereby, challenged the judgment & order passed by the SDO on the grounds more particularly set out in the memo of revision.

7. Pending the revision application, R&P from both the tribunals below was made available, heard Ld.Adv.Mane for the applicant / tenant and Ld.Adv.Nerle for the Opponents / landlords. After perusing the record from the tribunals below, facts pleaded, evidence led, documents proved and submissions made by the respective Ld.advocates, following points arise for my determination. I have recorded my findings with reasons thereon as under :-

	Points	**Answer**
1.	Whether the applicant / tenant has established his relationship with the Opponents as landlord and tenant interse since prior to 27-28 years prior to 1/4/1957 ?	No
2.	If not, whether the judgment & order passed by the appellate tribunal sustain in eye of law ?	No
3.	If not whether it calls for interference therein through this Tribunal within its limited revisional jurisdiction, & if yes, upto what extent ?	Yes. As per final order

Reasons

8. **Point No.1:-** The nature of the proceedings tried before the ALT is for the relief of declaration of the tenancy in respect of suit Gat No.485, which is more particularly described in para-1 of the application. After going through the entire pleadings put forth in main application dt.25/8/83 on which basis the proceedings has been initiated, it becomes crystal clear that the applicant has not disputed following material things, but made a judicial admissions to that effect which are as under :-

(i) The suit land initially owned by the applicant No.1 to 4 as their ancestral property, wherein the Opponent No.2 has got 1/3rd share therein.

(ii) The applicant has claimed tenancy rights over the entire suit land with specific averments which is in existence since prior to *Tillers Day* . Tenancy agreement is oral and name of applicant never entered in revenue record as a tenant in possession in column of cultivation till this date.

(iii) The applicant has specifically pleaded in his application itself that family relations with the land-owner were cordial, that no rent receipts were ever either issued or obtained at any point of time.

9. These material facts are itself sufficient to observe in later part of the judgment, that those judicial admissions does not require separate proof. Suffice to say that the applicant has admitted the fact that his oral tenancy was not ever recorded in revenue record and he does not possess any rent receipts to that effect. The judicial admissions made to that effect are as under from para-3 of the application which runs as under :-

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10. In continuation of above judicial admissions in the pleadings, if the revenue record in form of 7/12 extracts scrutinized minutely, it amply suggest that the name of the owner is continuously entered in the column of cultivation by using the word "khud" and by referring mode of cultivation as "Rit-1". Furthermore, there is no reference of past tenancy ever reflected in tenancy register in the name of the applicant nor his name is appearing in "other rights column", referring the specific mutation entry taking effects thereof in tenancy register.

11. In continuation of above factual aspects, it is pertinent to note here that the applicant has nowhere disclosed the details of oral tenancy as to when, with whom and in whose presence the tenancy agreement took place or what were the terms of payment of rent or mode thereof. In that context, when the pleadings are quite silent, for the first time applicant has tried to disclose the presence of two independent witnesses present at the time of alleged oral tenancy agreement with the landlord, which runs as under from page-179 of ALT's file.

" Æüß •Ö´Öß-Ö 25-30 ¾ÖÂÖì —ÖÖ»Öß ´Öß ú¸üŸÖÖ. ŸµÖÖ²ÖÖ²ÖŸÖ ŸÖÖë›ßü •ú¸üÖ¸ü —ÖÖ»ÖÖ ÆüÖêŸÖÖ. ŸÖÖë›üß •ú¸üÖ¸ü ÆüÖê¾Öæ-Ö †Ó¤üÖ•Öê 15-16 ¾ÖÂÖÖÔ†•ÖÖê¤ü¸ü —ÖÖ»ÖÖ.---------- ŸµÖÖ¾Öêôûß ´Öß, ¤ü›æü ¸üÖ´ÖÖ ¯ÖÖê¾ÖÖ¸ü ¾Ö ¯ÖÓ›üßŸÖ éúÂÖÖ úÖôêû Æêü †Ö´Ö"Öê ×¤ü¾Ö›êü ÖÓÖ¾Ö"Öê ÆüÖêŸÖê ---------- "ü

12. However, pending the trial, the applicant has not examined those so called independent witnesses nor he has made available them for the purpose of cross-examination. In short, oral evidence placed on record in deposition is lacking from pleadings and non-examination of witnesses available. Now material documentary evidence which goes against the present applicant, is that the record of Consolidation Scheme which took place in or about 1965. Even at the time of implementation of the scheme, the cultivation of the present applicant as tenant in possession was not ever noticed, but the same has been continued in the name of occupant, whose name was appearing in the column of occupancy. At this juncture, suffice to say that the consolidation record nowhere discloses the past tenancy of the applicant and same has reached to its finality. Since then till filing of the application i.e. from 1965 till 1983 the applicant has never raised the dispute regarding the enquiry of column of cultivation as prescribed in Rule-30 & 31 made under the provisions of Maharashtra Land Revenue Record of Rights (Preparation

and Maintenance) Rules, 1971. Even till this date such dispute has not raised at any point of time.

13. Now, only point remains for the consideration of this Tribunal is that the documentary evidence placed on record by the applicant and witnesses examined, so as to prove the alleged oral tenancy. At first, after perusing the documentary evidence in form of land revenue receipts, levy receipts, it gives an indication that at some time the applicant has made the payment of land revenue, but that is for and on behalf of land-owner. So also levy receipts are also in the name of land-owner and not in the name of applicant as the tenant in possession. Furthermore, weight receipts issued by Sugar Factory, where the sugarcane has been forwarded, have also issued several receipts in the name of land-owner and not in the name of present applicant. The only thing which is in favour of the applicant is that, he has produced the either original or the office copy of those receipts on record, as same were remained in his custody. For that purpose, it is well settled principle of Law that payment of land revenue receipts, levy charges or sending standing crop for sale and receipts thereof, if stands in the name of owner will not sufficient to establish the relationship of tenancy simply because that do not recognize the acquisance therefor by the landlord. In support of above observations, I may keep reliance on the precedent laid down by our *Hon.Supreme Court in a case of Hanmanta Vs. Babasaheb, reported in AIR 1996 SC-223.* The preposition of law laid down by Their Lordships can be summarized as under :-

> *"In absence of conclusive acceptance of oral lease and proof of agreement or acceptance of rent, possession over the land, even otherwise found is in form of possession of trespasser and nothing more. The burden is on the applicant to prove lawful possession referable to relationship of landlord and tenant. Entries in revenue record or even payment of land revenue receipts to Government without notice or acquiescence by the landlord is not sufficient to prove the fact of oral lease agreement."*

14. I have gone through the above precedent very carefully and do find that despite of miscellaneous documents placed on record in form of land revenue receipts, levy receipts, sale of sugarcane receipts etc., those are not sufficient to connect its relationship with the tenancy agreement of the applicant with the landlord for the disputed land, as there is no iota of evidence to reflect the acquiescence therefor by the landlord.

15. One important factum on which much more emphasize has been put forth by the advocate for the Revision Petitioner is that, the none of the landlord has appeared in the witness box, none of them have contested the proceedings and the contesting party i.e. Opponent No.9, Revi.applicant No.3 has no lucus-standi to dispute the tenancy of the present applicant. No doubt, it is admitted fact that the Opponent No.9is the purchaser of 1/3rd share from the suit land through its co-owner Arvind Kulkarni, the said sale transaction took place on 9/8/81. The said sale-deed is not formally entered in revenue record through M.E.No.492, certified on 31/3/82, but, since from the certification of said mutation entry name of Opponent No.9 continued in the column of cultivation under Rit-1 as the person in possession of the suit land. The applicant who is ever interested in disputing the

title and possession of Opponent No.9 over the suit property, ought to have atleast raised the dispute of column of cultivation as against the present Opponent No.9, but, same is also not seriously contested on merit and till this date name of the Opponent No.9 continued alongwith other co-owners as the person in possession under the Rit-1 only.

16. In short, in the given set of facts when the sale-deed of the part of the suit land effected in the name of Opponent No.9 prior to the filing of the application, he becomes a necessary party for the proceedings from its inception. Therefore, by taking note of his interest, the applicant has joined the Opponent No.9 as a party to the main proceedings. In that context, during the passage of time if the land-owners have not taken active part in the proceedings or even consented to confirm the decisions rendered, that will not affect the right of the present Revi.applicant No.3, either to proceed with the proceedings, dispute the correctness of the judgment & orders passed by the trial tribunal nor it will make him out of Court, merely because his predecessor-in-title is not showing interest in the *lis.* On the contrary, provisions of Sec.96 of CPC gives a right of appeal even to a person who is not a party either to the suit or appeal, may invoke similar type of remedy of appeal / review / revision, being **"aggrieved person"** against the judgment & order. Therefore, merely because the present Petitioner No.1 to 4 have withdrawn the revision application, right of present applicant No.4 will not come to an end automatically, but, it still in subsistence as he is a party to the proceedings throughout and so also aggrieved party by the order under revision. In support of above observations, I may keep reliance on the precedent laid down by our Hon.Sepreme Court, *in the case of Harbinder Singh Vs. Premjeet reported in 2014(2) Mh.L.J. 126.* The preposition of law laid down in the above precedent can be summarized as under :-

> *"The ordinary rule is that only a party to a suit adversely affected by the decree or his representatives in interest may file an appeal. However, the provisions of Section 96 amply suggest that person aggrieved by it or prejudicially affected by it may also prefer an appeal against such decree. The text whether third person is an aggrieved person or not has to be seen by testing the genuineness or grievance put forth."*

17. I have gone through the above precedent very carefully and do find that in the given set of facts despite of the facts that the Revision Petitioners / land-owners have either compromised or withdrawn themselves from continuation of the revision application, right to contest the same as a Petitioner No.3 still subsistence with the purchaser / Opponent No.9 in the main proceedings. In short, with these observations, I do find that, there is no legal substance in the grounds raised by the present respondents while supporting the judgment & order passed by the SDO, granting the tenancy rights in favour of them without evidence on record. On the contrary, after perusing the judgment & order of both the tribunals below, it amply suggest that the ALT has considered all voluminous record and rightly come to the conclusion that the voluminous record is nothing but all are in form of waste papers, while raising the plea of oral tenancy without acquiescence therefor by the land-owners. With these observations, I hold that the applicant has

miserably failed to prove his relationship with the Opponent No.1 to 4 as the tenant – landlord interse or his interest in the disputed property as a tenant in possession and answer the Point No.1 in negative.

18**.** **Point No.2 & 3 :** in view of finding of point No.1 in negative, I do find that the ALT Panhala has rightly considered the importance of judicial admissions on record, which do not call for independent evidence or also rightly ignored the documents placed on record which are irrelative in absence of acquiescence of relationship by the land-owner. On the contrary, the appellate tribunal has erred in interfering the judgment & order of ALT, while taking a different view as against the documentary evidence proved in form of revenue record, which is ever in favour of the land-owners. In the given set of facts, I do find that the reasonings recorded by the SDO do not get legal support, but requires to be interfered through this Tribunal, so as to restore the *reasoned order* passed by the ALT. With these observations I answer Point No.2 in negative and Point No.3 in affirmative as per final order & proceed to pass the following order.

ORDER

The revision application is hereby allowed.

The judgment & order passed by the appellate tribunal i.e. SDO Sahuwadi in Tenancy Appeal No.2/87, dt.15/5/89 is hereby set aside.

The judgment & order passed by the ALT Panhala in tenancy case No.37/83, dt.19/9/86 rejecting the application of the tenant for the relief of declaration of tenancy in his favour stands restored.

The application moved by the tenant u/s 70(b) of the Act stands dismissed.

No order as to costs.

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

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