Kalam 32 O Page No 103

BEFORE THE DESIGNATED MEMBER, MAHARASHTRA REVENUE TRIBUNAL, BENCH AT PUNE.

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

No.TNC/REV/SH/20/2002

Shri Uddav Maruti Pawar,
D/H--Shri.Narsing Uddav Pawar & otrs.,
R/o.Pimpalgaon Dhas,
Tal.Barshi, Dist.Solapur. .....Applicants

VS.

Smt.Alka Narayan Shah @

Smt.Alka Rajeshbhai Shah & otrs.,
R/o.Arban Bank Colony, Station Road,
B.No.5, Shivneri Marg, Ahmednagar.
.....Respondents

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

Appearance :- Adv. Shri Jadhavar for Revision Applicants
Adv. Shri Karanjkar for Respondents

DATE:- 22nd MARCH, 2019

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Solapur Sub Dn., Solapur (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.20/1996, dt.1/4/2002 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

convenience parties hereinafter referred in the same sequence and chronology in which they were referred before CJJD Barshi, in RCS No.401/84 as the Plaintiff or the Defendants as the case may be. Facts giving rise to the present revision application can be summarized as under.

2. The present *lis* is initiated with common proceedings, one initiated by the tenant u/s 70(b) of the Act and lateron clubbed with the proceedings u/s 85(A) of the Act, as per the Reference made by Civil Court in RCS No.401/84.

3. One Smt.Kesharbai Jagannath, was the original landlady of suit land Gat No.84/A situated at Village Pimpalgaon Dhas, Tal.Barshi. The Plaintiff claims the title and interest in the property as the Legatee on the basis of Will executed in her favour by the original landlady. Original Defendant No.1 was obstructing the possession of the Plaintiff over the disputed land. Therefore, facts and circumstances specifically pleaded in RCS No.401/84 constrained the Plaintiff to file a suit for declaration and perpetual injunction against the Defendant. Pending the suit after the receipt of suit summon, the Defendant Uddav raised the plea of tenancy since 1970. As per the terms of the lease, Batai in crop was agreed as an annual rent for the disputed property. In short, by raising the plea of tenancy, Defendant has asserted the lawful possession over the disputed land and prayed for the dismissal of the suit. By taking the note of pleadings put forth by the respective parties Ld.CJJD Barshi has framed the Issue No.3 and referred the same to the tribunal for recording the findings against the Issue raised by the contesting Defendant. As per the pleadings put forth, the Issue famed by the Ld.CJJD Barshi, which was referred to the tribunal runs as under:-

Issue No.3: *Whether Defendant No.1 proves he is the tenant for the suit land from 1970?*

4. Before reaching the reference u/s 85A of the Act, tenancy proceedings through file No.22/85 u/s 70(b) of the Act, was already pending before ALT Barshi, wherein the tenant has moved an application for declaration of his status as the tenant in possession over the disputed land u/s 70(b) of the Act. Said proceeding being pending at the time of reference made by the Civil Court, both the proceedings clubbed together. During the enquiry after recording the statement of tenant Uddav on 14/2/1986, ALT has answered the Issue in Affirmative. The aggrieved landlord has taken the matter to the Ld.appellate tribunal by preferring

Tenancy Appeal No.23/86, as the matter was decided ex-parte in absence of the landlord, matter was remanded back. After the remand, ALT has again enquired the matter as afresh and by judgment & order dt.10/10/96 recorded the findings of the Issue referred in Affirmative. Being aggrieved by the said judgment & order the aggrieved landlord has preferred Tenancy Appeal No.20/1996, which came to be decided by judgment & order dt.1/4/2002, whereby, the Ld.appellate tribunal has set aside the order of Ld.trial tribunal and recorded the findings of Issue referred in Negative. Being aggrieved by the said reversal of findings recorded by Ld.trial tribunal, the aggrieved tenant has invoked the remedy of revision u/s 76 of the Act, on the grounds more particularly set out in revision application.

5. After receipt of record & proceedings from both the tribunals below, heard Ld.Adv.Shri.S.S.Jadhavar for the Revision Petitioner / tenant and Ld.Adv.Shri.Karanjkar for the Respondent / landlord. After perusing the R&P from both the tribunals below and after considering submissions made by respective Ld.advocates in support of their rival contentions before this Tribunal, 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 is proper, correct and legal in eye of Law, as a part of enquiry contemplated for the reference made by the Civil Court?	Affirmative
2.	Whether the judgment & order passed by Ld.appellate tribunal calls for interference therein within the limited revisional jurisdiction of this Tribunal as per Sec.76 of the Act?	Negative
3.	What order in respect of the costs, if any?	As per final order

Reasons

6. Point No.1&2: Before re-appreciating the entire record & proceedings and considering the submissions by the respective advocates, at first I may state here that my Ld.Brother had decided the revision by

order dt.9/3/2018 in absence of the Revision Petitioner. Being aggrieved by the said order the aggrieved tenant had taken the matter before Hon'ble High Court, through Writ Petition No.2275/1987. While deciding the said Writ Petition after considering the submissions made before the Bench, Hon'ble High Court, has remanded the matter for fresh hearing before MRT. By taking the note of these facts on record it is pertinent to note here that, while moving an application dt.1/3/2018 the Applicant / Revision Petitioner had prayed for adjournment on the ground that he intends to produce certain documents in support of his case. No doubt, that application was rejected by my Ld.Brother by order dt.1/3/2018 and decided the matter on the basis of record available before him. However, even after the remand the Revision Petitioner / tenant has not produced atleast revenue record in form of 7/12 extracts so as to make out his case of starting period of tenancy and relevant entries to that effect in revenue record till this date. The only 7/12 extract which is on record which is at Page-119 from the record of SDO file is for the year 1982-83, wherein in the column of remark certain facts have been noted in respect of the pendency of enquiry in respect of the dispute of column of cultivation/ The said entries are in Pencil. For the purpose of ready reference I may quote those remarks as under:

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7. Bare perusal of this entry speaks volume that dispute about the column of cultivation initiated by the Revision Petitioner for the first time in the year 1982-83 and proceedings were initiated before Tahsildar as per the provisions made in Maharashtra Land Revenue Record of Rights (Preparation and Maintenance) Rules, 1971. Unfortunately till the conclusion of the arguments the Revision Petitioner has failed to produce the order if any passed by Revenue Officer in the said proceedings and its finality if any. On the contrary after considering these entries in Pencil in the column of remarks gives an indication that the dispute about the column of cultivation was not either finally decided as per the Rules prescribed under the Code, nor it has been reached to its finality in favour of the Revision Petitioner as the person in possession other than the occupant. Unfortunately, the Revision Petitioner has failed to produce the 7/12 extracts subsequent to 1982-83 onwards particularly when the dispute about the relations between the parties have been initiated in the year 1984 for the first time.

8. Secondly, as per the facts pleaded in the written statement filed in RCS No.401/84, it has become evident that the Revision Petitioner has tried to make out the case of oral tenancy since March, 1970 onwards. However, the pleadings put forth in the written statement are quite vague, weak and insufficient to make the plea of tenancy particularly on the point of day, date, time and place as and when the tenancy has started, with whom the tenancy agreement took place, in whose presence the said talk took place. In short, the pleadings put forth in written statement are not sufficient even to raise the plea of oral tenancy. In addition thereto, the evidence laid by the Revision Petitioner before the ALT during the course of enquiry is also vague. He has not given the details of day & date of the alleged oral tenancy with the landlord. Admittedly, no receipts have been ever issued or even claimed by the Revision Petitioner in token of payment of share in crop as alleged. In addition thereto, before accepting the oral evidence pleaded by the Revision Petitioner and his witnesses named Lala Munde & Santosh Dnyaneshwar, it has become evident that, their presence as the witnesses for the alleged oral talk do not find the place either in the pleadings or in the evidence of the Revision Petitioner before the ALT. Suffice to say that the role of witnesses produced by the Revision Petitioner is nothing but either chance or got up interested witnesses. Therefore, if the oral evidence is not supported by consistent, reliable pleadings and the evidence of own party, the oral evidence of other witnesses do not take the place of reliable and acceptable proof on the point of terms of alleged oral tenancy. Therefore, despite of the fact that the Ld.trial tribunal has failed to follow the due process of enquiry and recording of witnesses offering them for the purpose of cross-examination, still then suffice to say that the entire evidence is not reliable.

9. Thirdly, it is pertinent to note here that, despite of the fact the dispute of column of cultivation though started in the year 1982-83 for the first time the Applicant has nowhere asserted or explained as to why he has not initiated the proceedings under Tenancy Act before the receipt of suit summons of RCS No.401/84. On the contrary while moving an application u/s 70(b) of the Act, he has admitted the fact that the proceedings u/s 70(b) of the Act, at his instant started by him after the receipt of suit summons of the said suit. The relevant averments made in the application dt.17/1/85 speaks volume therefor which runs as under:

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10. In short, above averments made in the proceedings initiated by the Revision Petitioner u/s 70(b) of the Act, are self-explanatory to hold that it is for the first time on 17/1/85, after the receipt of suit summons of RCS No.401/84 the Revision Petitioner has raised the dispute of relationship of tenancy with the landlord and not prior to it. In the given set of facts, the very fact of inception of the proceedings creates doubt and i.e. without details of alleged oral tenancy. Even otherwise there is no evidence of certification of lawful possession of the Revision Petitioner either before or after institution of the proceedings u/s 70(b) of the Act.

11. Fourthly, after perusing the report at Exh.36 in RCS No.401/84 produced on record by the Revision Petitioner it has become doubtful as to whether the Receiver has taken actual physical possession or he has taken the symbolic possession without dispossessing the tenant in the disputed land. The report at Exh.36 is completely silent on this issue. If Eksala Lavni is followed after the appointment of Receiver, what was the role played by the Revision Petitioner has not placed on record, whether he is in actual physical possession and the Receiver has taken symbolic possession or whether the actual possession has taken by the Receiver and Eksala Lavni is followed regularly on the basis of highest bid, nowhere explained. Suffice to say that pending the suit, whether the Revision Petitioner is in possession or not, no '*iota of evidence'* is placed on record to that effect.

12. Admittedly, the facts put forth by the Revision Petitioner makes it crystal clear that the oral tenancy has been claimed after 1/4/1957. It is well settled principle of law that the oral tenancy is permissible, but not vague. It must be supported by documentary evidence and conduct of the parties. As a part of conduct there is no evidence of rent receipts. As a part of record there is no entry in the column of other rights or in the column of cultivation. There is no evidence of enquiry if any conducted before initiating the proceedings about the dispute regarding relationship of tenancy between the parties to the *lis* . It is pertinent to note here that, mere possession of the party over the disputed land is not sufficient to record the finding of relationship and for that purposes lawful possession

so as to establish the tenancy. On this touchtone Ld.advocate for the Respondent rightly called my attention towards the following precedents.

(i) Rajaram Bhoi / Chintaman Sathe, 2012(2) MhLJ-151

(ii) Maruti Patil / Sulbha Patil, 2007(1) MhLJ-102

The Law laid down in the above precedents can be summarized as under:

> *"Even in case of oral tenancy if pleaded burden of proof is ever rest upon the tenant to prove the lawful possession in the capacity of tenant. If documentary and oral evidence is self-contradictory then sufficient to come to the conclusion that oral evidence laid by the tenant being inconsistent should be rejected".*

In addition thereto, I may keep reliance on the following two precedents.

(i) Vitthal Manjre / Ambadas Dhage, 1999 ALL MR(4)-670

(ii) Hanumanta Nimbal / Babasaheb Londhe, AIR 1996-SC-223

The proposition of law laid down in those precedents can be summarized as under-

> *"The burden is on the Applicant to establish his lawful possession. Except the oral tenancy no other evidence was brought on record. Entries in the revenue record cannot be established lawful possession when admittedly no notice has given to the Respondent before making those entries. Other circumstances such as payment of land revenue to the Government through Talathi being without notice or acquisance by landlord would not take the place of proof to establish the relationship. The tenancy agreement can be oral or in writing. The person claiming tenancy right with intention to get the matter referred to the tenancy court has necessarily to plead this agreement and give all opportunities like when it take place, with whom it takes place, what was the nature of the agreement, duration of agreement and terms of agreement, if he has relying upon the agreement on the writing, then he must plead the above facts together with the facts of the execution of the document, its attestation, registration etc."*

13. I have gone through the above precedents very carefully and do find that while applying the ratio laid down therein to the case at hand, the Revision Petitioner has utterly failed to plead the details of oral

tenancy in the pleadings. Even otherwise he failed to establish as to why his name was not appearing in the column of cultivation since from the date of starting of tenancy. He has also failed to establish his subsequent conduct consistently regarding the entries in the revenue record atleast from the date of dispute started. Therefore, the Law laid down in the above precedents certainly helps me to come at the conclusion that the pleadings put forth and evidence laid by the Revision Petitioner in support of his claim of oral tenancy and reference therefor to the tribunal, is vague and insufficient to establish the lawful possession over the disputed land, within the meaning of Sec.70(b) of the Act. In these circumstances even otherwise after considering the judgment & orders passed by tribunals below, it has become evident that the Ld.appellate tribunal has tried to appreciate the facts on record in the prospective sense of the Law laid down by our Hon'ble High Court and Hon'ble Supreme Court in several precedents. Not only that, but the judgment & order passed by Ld.appellate tribunal being based on sound reasonings in support therefor does not call for interference therein through this Tribunal within its limited revisional jurisdiction as a Court of Revision is not permissible to re-appreciate the entire evidence as a whole so as to record contradictory findings against the findings recorded by last fact finding Tribunal. With these observations, I answer the 'Point No.1 in affirmative and Point No.2 as negative'.

14. Point No.3: So far as the conduct of the Revision Petitioner is concerned, it is pertinent to note here that he has raised the dispute of oral tenancy after the receipt of suit summons of RCS No.401/84. He has failed throughout to plead and prove his lawful possession over the disputed land as a tenant in possession since beginning. All these facts are mentioned here only to show that as to how the Revision Petitioner has shown his interest either to prolong the litigation or to drag the landlord in the Court of Law without any justification and lawful interest with him over the disputed property. Therefore, I am of the view that this is the fit case where the Tribunal shall invoke the powers u/r 36 made under the Code, so as to impose the substantial costs in favour of the succeeding party of the *lis* throughout. With these observations, I would like to quantify the amount of costs to be saddled against the Revision Petitioner upto Rs.20,000/- and answer the 'Point No.3 accordingly'. With these observations, I proceed to pass the following order.

ORDER

Revision is hereby dismissed with costs.

The judgment & order passed by Ld.appellate tribunal in Tenancy Appeal No.20/1996, dt.1/4/2002 is hereby confirmed.

The Revision Petitioner shall pay the costs of Rs.20,000/- to the successful Respondent within one month from the date of order. Failure to which the Respondent is at liberty to recover the amount of costs awarded from the Petitioner as the arrears of land revenue by invoking the remedy of execution before the tribunal of first instance.