

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

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

No.75/B/2000/NS

Tukaram Amruta Shivthare @ Gaikwad
D/H--Smt.Sonabai Tukaram Shivthare @ Gaikwad
D/H—Shri.Baburao Tukaram Shivthare @ Gaikwad & otrs.,
R/o.Kalambhe, Po.Sarjapur, Tal.Wai, Dist.Satara.Applicants

VS.

Trimbak Krishna Kulkarni
D/H—Shri.Kishor Trimbak Kulkarni & otrs.,
R/o.Prasanna Society, 676, Bibwewadi, Pune.Respondents

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

Appearance :- Adv. Shri J.P.Dhayதாக for Revision Applicants.
Adv. Shri B.B.Bhargude for Respondents

DATE:- 14th DECEMBER, 2018

JUDGMENT

Being aggrieved by the judgment & order passed by Ld.appellate tribunal i.e. Sub-Divisional Officer, Wai Sub Dn.Wai (hereinafter referred as the "appellate tribunal") in Tenancy Appeal No.3/2000, dt.29/5/2000, the aggrieved appellant 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. The */is* has been initiated before the tribunals below as the outcome of Reference u/s 85A of the Act, made by CJJD Wai in respect of the Issues framed in RCS No.347/76. As the */is* is the outcome of the Court Reference, parties hereinafter referred in the same sequence and chronology in which they were referred before the Civil Court, as the Plaintiff or the Defendants as the case may be. Facts giving rise to the present */is* can be summarized as under.

2. The Defendant Shri.Trimbak Kulkarni was the owner of the suit property described in Para-1 of the plaint consistent of three survey numbers to which a consolidated Gat No.231 has been allotted during the course of consolidation. The original Plaintiff Shri.Tukaram Shivthare has filed RCS No.347/76 before CJJD Wai, for the relief of possession and enquiry in respect of the future mesne-profit against the Defendants. The Plaintiff has specifically pleaded that the suit properties were in his possession as the tenant in possession since 1940 onwards. As such the Plaintiff has perfected statutory title over the suit property as the "*deemed purchaser*" as on the "*tillers' day*". However, at first the Defendants have managed to effect wrongful entries in revenue record in their name. Thereafter, in the month of May, 1975 the Defendants have dis-possessed the Plaintiff by use of force and that too without following due process of Law under the provisions of Tenancy Act. At that time the Plaintiff has found that the Defendants have managed and thereby, succeeded in deleting the entries in favour of the Plaintiff from the revenue record. As a part of pleadings the Plaintiff has specifically pleaded that neither he has surrendered his tenancy rights at any time in favour of the Defendants nor he has handed over the possession thereof in favour of the Plaintiff lawfully. Secondly, as a part of pleadings Plaintiff has also pleaded that the alleged partition of the disputed property effected by the Defendant No.1 in favour of the Defendant No.2 is bogus, false and imaginary and its effect in revenue record was with intend to defeat the statutory right of "*deemed purchaser*" in favour of the Plaintiff. Therefore, when the question of postponement of "*tillers' day*" does not survive the act of dis-possession followed by the Defendant in the year 1975 is illegal. Therefore, circumstances constrained him to file a suit for declaration coupled with the ancillary relief of possession of the suit property.

3. The landlord / Defendant No.1 has contested the suit by filing written statement. While contesting the suit the contesting Defendant No.1 has specifically denied each averments made against him. As a part of pleadings this Defendant has specifically pleaded that the partition effected in between Defendant No.1&2 interse was proper, legal and valid, Plaintiff has no concerned whatsoever either to challenge or deny the same. In addition thereto, in Para-7 of the written statement the Defendant No.1 specifically pleaded that the Plaintiff has surrendered his rights before the Mamlatdar in a lawful proceedings in the year 1957 and since then the Defendant No.2 was in possession of the suit property till the property has been transferred in favour of the Defendant No.3&4. Neither the Plaintiff has any legal right against the Defendant No.1&2 nor he has legal right to impeach the transfer effected in favour of Defendant No.3&4. Therefore, the contesting Defendants prayed for the dismissal of the suit.

4. Defendant No.3&4 have also filed their written statement. They have specifically pleaded that after verifying the earlier tenancy proceedings between the parties thereto they have purchased the suit property. The

present Plaintiff has no *lucus-standi* either to impeach or deny the legal effect thereof in the present suit.

5. On the basis of pleadings put forth after exhausting the first round of litigation before the Civil Court, Issue No.7&8 came to be framed before CJJD Wai, which pertains to the domain of the tribunal under the Act. The relevant Issues framed and concurrent findings recorded by the tribunals below are as under:

Issue No.7 : Does plaintiff prove that he become deemed purchaser on 1/4/57 in the suit property? **---Negative**

Issue No.8 : Do defendants prove that plaintiff surrendered his tenancy right? **---Affirmative**

6. After considering the mandate of Sec.85A of the Act, those Issues were referred to the tribunal below. Accordingly, the proceedings came to be initiated before ALT Wai, through file No.1/97/85A. The Mamlatdar has decided the said proceedings by order dt.20/12/99. Being aggrieved by the said judgment & order the Plaintiff has preferred the tenancy appeal No.3/2000 before SDO Wai, which came to be decided on merit by judgment & order dt.29/5/2000. By the said judgment & order the Ld.appellate tribunal has confirmed the findings recorded by Ld.trial tribunal. Therefore, being aggrieved by the said concurrent findings the aggrieved tenant has preferred 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.

7. After the receipt of R&P from both the tribunals below heard Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioner and Ld.Adv.Shri.B.B.Bhargude for the Respondents. Perused the R&P from both the tribunals below.

8. During the course of arguments while challenging the impugned order passed by the tribunals below Ld.advocate for the revision petitioner strongly submitted that the alleged partition between the father and son i.e. Defendant No.1&2 is false, bogus and imaginary and brought on record just to defeat the statutory right of the Plaintiff. Therefore, once the partition is presumed to fake or bogus one, there is no issue to have a postponement of "*tillers' day*" or even proceedings for valid surrender u/s 15 of the Act. Once the statutory right of purchase has been conferred as a "*deemed purchaser*" in favour of the tenant in possession, there shall not be even lawful proceedings for surrender u/s 15 of the Act. On this touchstone, the order passed by both the tribunals below does not sustain in eye of Law being void-ab-initio. In continuation thereto Ld.advocate has strongly submitted that when the documentary evidence is sufficient on record to show that S.No.39/1 was in possession of the Plaintiff till 1975 onwards, there is no

reason to dis-believe that the proceedings initiated by the Plaintiff for possession are perfectly valid and within limitation. In support of his submissions Ld.Adv.Shri.J.P.Dhayதாக kept his reliance on the following precedents.

(i) *Vasu Dhondi Sutar / Ganpati Dhondi Sutar, 1992(1) MhLJ-730*

(ii) *Babu Parasu Kaikadi / Babu, 2004(3) Bom.C.R.350*

9. As against this Ld.Adv.Shri.B.B.Bhargude strongly submitted that the suit filed is not tenable. The findings recorded by the tribunals below earlier i.e. in the year 1958 have reached to its finality. Therefore, same cannot be re-opened by adopting the process of reference through Civil Court. Furthermore, he has strongly submitted that the Defendants are in possession of the suit property since prior to 1/4/1957. Therefore, the pleadings put forth regarding the dis-possession on the particular date just prior to the suit are misconceived and deserves to be rejected. In support of his submissions Ld.Adv.Shri.B.B.Bhargude kept his reliance on the following two precedents.

(i) *Laxmanrao Satardekar / Bapu Pawar, 1988(2) Bom.CR-259*

(ii) *Dattu Parit / Javahar Shah, 2006(1) ALL MR-106 : 2006(1) MhLJ-776*

10. I have gone through the entire R&P from the tribunals below. Read the concurrent findings recorded by tribunals below. After giving anxious thought to the submissions made by both the Ld.advocates and after considering the facts proved on record following points arise for my determination. I have recorded my findings with reasons thereon as under :-

<u>Points</u>	<u>Findings</u>
1. Whether the concurrent findings recorded by tribunals below against the reference made are proper, correct and legal one?	Affirmative
2. If not, whether it calls for interference therein through this Tribunal? and if yes, upto what extent?	Does not survive

Reasons

11. Point No.1&2: Facts either admitted or otherwise duly proved through documentary evidence in form of public record if narrated in nutshell that will help to avoid the repetition of the facts and evidence on record, which are as under:

12. The Defendant No.1 Trimbak Kulkarni was the original owner of suit property. The Plaintiff Tukaram was the tenant in possession over the entire suit property since 1940 onwards. The description of the suit property is more particularly given in Para-1 of the plaint before the Civil Court. Plaintiff / tenant Tukaram reported dead on 16/2/83 living behind the revision petitioners before the Tribunal as his LR's. Parties have not disputed the fact that though the RCS No.347/76 came to be filed before the Civil Court on 3/9/76, the tenancy issues in the *lis* came to be framed in the year 1996 in the first round of litigation before the Civil Court and that is by the order of appellate court directing the court of first instance to refer the tenancy issues involved in the matter to the tribunal for its adjudication as per Sec.85A of the Act. Furthermore, parties have not disputed the fact that pending the *lis* the original owner-Defendant No.1(a) transferred the suit property in favour of the Defendant No.3&4 through registered sale-deed dt.19/5/76 on which basis M.E.No.247 came to be certified in ROR.

13. With these short proved facts Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioner strongly submitted that revenue record speaks volume about the nature of possession of the Plaintiff over the disputed lands since prior to and as on the "*tillers' day*". Therefore, transaction shown in revenue record about the alleged partition amongst the father and son inter se is fake and brought on record just to defeat the statutory rights accrued in favour of the tenants as on the "*tillers' day*". In short, Ld.advocate strongly submitted that M.E.No.729 which came to be certified on 7/8/57 is a fake and bogus and therefore, if that entry has been kept aside, there is a question of conducting proceedings u/s 15 of the Act, for surrender through file No.34/57. Therefore, orders passed in the said file are nonest in eye of Law.

14. I do not find strong substance therein as a fact on record it cannot be ignored that, M.E.No.729 is self-explanatory stating that same has been taken on record on the basis of application moved by the original owner dt.22/12/56 i.e. prior to "*tillers' day*". In continuation thereof one should not loose the sight to the fact that neither the tenant / Plaintiff nor any other person interested in the property disputed the correctness of the said entry till filing of the suit. Bare perusal of the recitals of the entry speaks volume that a specific property as a whole allotted to the share of the minor, wherein question of demarcation of separate share or boundaries thereof does not survive. Even otherwise as per the settled proposition of Law, partition as a fact does not required to be reduced into writing. If at all it is so recorded then and then it requires registration. In short, even oral partition is also permissible. Therefore, when M.E.No.729 is not challenged by the tenant at any point of time, it shall be presumed that the fact of partition prior to the "*tillers' day*" has remained unchallenged and reached to its finality.

15. On this point the Ld.Adv.Shri.J.P.Dhaytadak strongly submitted that when there is no proof of complete partition and same is made with intend to defeat the purpose of Statute, it should be presumed to be not proved, for

the purpose of the deeming provision in favour of the tenant. In support of his submissions Ld.advocate keep his reliance on the precedent laid down by our Hon'ble Supreme Court, in the case of *Chandrakant Dhaibar / Patel Purushottamdas, 1972 TLR-215-SC*.

16. I have gone through the above precedent very carefully and do find that, in the case relied upon, Hon'ble Supreme Court has a sufficient evidence of partial partition as regards the joint family properties and in that consequence the Hon'ble Supreme Court, has ruled that the alleged partition was fake one for the purpose of provisions under the Act. As against this, herein this case, M.E.No.729 is self-indicative to the effect of the lands described in the said mutation entry were wholly allotted to the Defendant No.1a). There is no pleading or evidence on record to establish as to how the partition effected through M.E.No.729 is partial either for the parties or the properties. Mere submissions that the alleged partition is partial one will not take the place of required proof. Therefore, with due respect to the Law laid down in the above precedent I am of the humble opinion that the proposition of Law laid down therein cannot be strictly applied to the case at hand for want of sufficient pleadings and proof on the point of alleged partial partition.

17. Secondly, subsequent conduct of the parties came on record through the proceedings initiated by the Plaintiff / tenant himself. After the certification of above referred mutation entry, proceedings came to be initiated at the instant of the tenant / Plaintiff through an application dt.29/3/57 i.e. prior to "tillers' day". That application is self-explanatory to the effect that the order below that application came to be passed by ALT on 22/5/57. After going through the entire order passed in tenancy file No.34/57 of which can be is at Page-61 in ALT record amply suggests that the ALT has taken utmost care about the satisfaction of judicial satisfaction before accepting the surrender. Herein this case, proceedings of surrender came to be initiated before 1/4/1957 i.e. on 29/3/57 and i.e. before passing of statutory title in favour of the deemed tenant. Therefore, the question of surrender subsequent to the "tillers' day" does not sustain in eye of Law as the proceedings under the provisions of Mamlatdar's Courts Act, 1906, which pre-supposes the verification of the proceedings before inception sufficiently establish the fact that the tenant has made a statement to the satisfaction of the Mamlatdar's Courts Act, while the petition came to be registered i.e. on 29/3/57. Therefore once the proceedings has been initiated for the purpose of surrender, the date of order becomes a part of judicial enquiry and will not postpone the legal effect thereof. At this juncture Ld.advocate for the revision petitioner called my attention towards the precedent laid down by our Hon'ble High Court, in the case of *Vasu Dhondi Sutar / Ganpati Dhondi Sutar, 1992(1) MhLJ-730*, and strongly submitted that if the deemed tenant found in possession on 1/4/1957 subsequent surrender is not valid. I have gone through the above precedent very carefully and do find that, in the case decided by our Hon'ble High Court, surrender was recorded on a separate

document in form of Deed i.e. on 31/3/1957 i.e. on Sunday through private document and not as a verification before Mamlatdar as contemplated u/s 15(2) of the Act, and in that context Hon'ble High Court, has ruled that act of surrender and subsequent act of delivery of possession is nonest in eye of Law. Herein this case, facts are quite distinct. Judicial proceedings were initiated far earlier than "*tillers' day*" and that too by moving an application by tenant himself on 27/3/57. Therefore, with due respect to the Law laid down in the above precedent, I most humbly submit that the proposition of Law laid down therein is not applicable to the case at hand strictly. On the contrary, it makes crystal clear that the proceedings of surrender initiated by the tenant accepted by the Mamlatdar with due enquiry and after judicial satisfaction therefor, has gone unchallenged and reached to its finality as the aggrieved tenant has not preferred any appeal against the said order dt.22/5/57.

18. Thirdly, subsequent conduct of the parties after passing the order dt.22/5/57 is self-explanatory to the effect that fresh M.E.No.827, dt.30/1/58 and M.E.No.1000, dt.10/4/68 came to be certified as a part of revenue record, whereby, the name of the tenant appearing in the other rights column as P.T. or O.T. as the case may be, came to be deleted. Not only that, but, after perusal of the 7/12 extracts since after 1957-58 till this date, it amply suggests that the name of the tenant came to be deleted from the column of cultivation and the entry has been continued in the name of the occupant in person showing the Rit-1 or 2 as the case may be. As against this while presenting the plaint before Civil Court the Plaintiff has tried to plead that he has been dis-possessed in the month May,1975 by the landlord by taking undue advantage of his illiteracy and poverty. However, except bare words there is no documentary evidence to support the case of the Plaintiff that even after passing the order dt.22/5/57 he was ever in possession of any piece of the land till May,1975.

19. In order to prove the possession of the disputed land as on May,1975 Plaintiff has kept his reliance on the order passed by the ALT in tenancy file No.32(1b)/Kalambe, dt.16/6/71. Copy thereof is at page-125 from ALT record. I have gone through the said order, which pertains to S.No.39/1 and not Gat No.231. Gat No.231 is the consolidated part of all these three disputed survey numbers including S.No.39/1. The 7/12 extracts of 39/1 nowhere discloses possession of the Plaintiff since 1957-58 onwards till 1970-71 as observed in the disputed order. The Plaintiff has produced mere order and failed to produce the detail proceedings. Therefore, that order is not sufficient to come at conclusion that the Plaintiff was at all in possession of any part from Gat No.231 till Aug.1971.

20. Now, the issue **crup** i.e. what shall be the effect of the previous relations if any that to the family of Plaintiff and Defendant No.1 as tenant / landlord or with the disputed land. In that context, law is well settled that surrender is not the transfer or acquisition within the meaning of Sec.84C of

the Act. In case if the surrender is not valid or binding on the tenant, his relations with the land and the landlord remains intact and for the purpose of Sec.29(1) of the Act, it becomes obligatory for him to take action against the order of illegal dis-possession against the landlord within the stipulated period of two years. If he failed to do so, even otherwise his tenancy rights if any stands extinguished. In support of above observations I may keep reliance on the precedent laid down by our Hon'ble High Court, in the case of *Ramchandra / Dhondiram, 1980 Bom.C.R.826* wherein His Lordship has ruled as under :

"In case of surrender which is not valid and not binding on the tenant by raising of same is same being not in accordance with Sec.15(1) of the Act, then tenant has a right to apply to Mamlatdar for restoration of possession u/s 29(1) of the Act. If the tenant did not take any steps within the period of two years their right if any stands barred by limitation. It must be held that Plaintiff has lost his remedy and his rights as tenant also stands extinguished."

21. I have gone through the above precedent very carefully and do find that, while deciding the case referred supra, Hon'ble High Court, has dealt with the effect of possession of tenant over the disputed land since 1951-52 onwards and absence of entries in revenue record about the possession column subsequent to 1956-57 onwards. I am of the view that the proposition of Law laid down in the above precedent is perfectly applicable to the case at hand so as to come at a conclusion that the rights if any accrued in favour of the Plaintiff stands extinguished being barred by limitation.

22. Last not but the least, Issue of Law involved in the petition is that of scope of enquiry before ALT based upon a Reference made by Civil Court u/s 85A of the Act. On this touchstone, it is pertinent to note here that, the judgment & order passed by ALT in tenancy file No.34/57 u/s 15(1) of the Act, by order dt.22/5/57 has reached to its finality being not challenged by the aggrieved party by invoking the remedy appeal / revision / review etc. uptill now. This fact is not seriously disputed by the present Plaintiff. In that context, it is pertinent to note here that, the scope of reference u/s 85A of the Act, and the restrictions with the tribunal to dealt with the Issues referred for the decision by the Civil Court is ever limited. When the proceedings under this Act if concluded and reached to its finality and no appeal or any proceedings having been adopted against them same could not have been set aside by a sidewind of tenancy reference while answering the reference u/s 85 of the Act. In support of above observations I may keep reliance on the following two precedents.

- (i) *Jaggu Tukaram / Dnyandeo, 1998(1) ALL MR-267*
- (ii) *Jaggu Tukaram / Dnyandeo, (2003)2 Bom.C.R.465*

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

"The Tenancy Court while answering Reference by Civil Court u/s 85A of the Act, cannot re-open the decisions u/s 32G or 32M of the Act, which reached to its finality. In any case when proceedings under this Act, if concluded and no appeal or any proceedings having been adopted against them, same could not have been set aside by a sidewind by Tenancy Court, while answering a Reference made to him by Civil Court u/s 85A of the Act".

23. I have gone through the above precedents very carefully and do find that, while deciding the cases before their hand, Hon'ble High Court, has considered the effect of judgment & order passed u/s 32G & 32M of the Act, in favour of the tenant which reached to its finality as the landlord has not preferred any appeal against it. Herein this case, the facts are reverse. Order passed by the tribunals u/s 15(2) of the Act, against the tenant has reached to its finality, as same has not been challenged by invoking the remedy of appeal. Therefore, I am of the view that the proposition of Law laid down therein is perfectly applicable to the case at hand so as to come at conclusion that, while initiating the fresh second wind of litigation by filing suit for possession, the findings recorded by tribunal in earlier proceedings cannot be set aside or ignored while answering the Reference u/s 85A of the Act, which certainly goes against the Plaintiff herein this case.

24. By keeping in mind all these factual circumstances proved and subsequent conduct of the Plaintiff / tenant prior to the suit and subsequent thereto it amply suggests that neither he was legally in possession as the tenant in possession on "tillers' day" nor he has proved his legal right to ask for possession subsequent thereto as his rights if any came to be extinguished due to the bar of Law of limitation. **Therefore, after going through the judgment & orders passed by the tribunals below, I do find that the findings recorded by tribunals below which are concurrent in nature and wherein findings answered against the Plaintiff, I do not find it necessary to interfere therein, by this Tribunal within its limited revisional jurisdiction.** In short, the judgment & order passed by Ld.trial tribunal and confirmed by the Ld.appellate tribunal being based on sound reasonings on facts and supported by Law established by the precedent, same deserves to be confirmed. Accordingly, I answer the 'Point No.1 in affirmative and Point No.2 as does not survive' and proceed to pass the following order.

ORDER

The revision application moved by the Plaintiff / tenant against the judgment & order passed by the SDO Wai in Tenancy Appeal No.3/2000, dt.29/5/2000, is hereby dismissed.

The findings recorded by the Ld.trial tribunal as regards the Issues referred by the Civil Court for its reference are hereby confirmed.

Certified copy of judgment be sent to CJJD Wai in compliance of Sec.85(2) of the Act, alongwith the copies of judgment passed by the tribunals below, so as to act accordingly.

No order as to costs.

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

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