Supreme Court of India
Damu Ganu Bendale vs Arvinda Dhondu Talekar And Others on 16 November, 1993
Equivalent citations: AIR 1994 SC 1303, 1995 Supp (1) SCC 182
Bench: R Sahai, S Bharucha, N Venkatachala
JUDGMENT

1. This tenant's appeal by grant of special leave is directed against judgment and Order of the Bombay High Court dismissing the writ petition filed under Article 226 of the Constitution in limine.

2. The only dispute that arises for consideration is if the Maharashtra Revenue Tribunal (hereinafter referred to as 'the Tribunal') was justified in interfering with the findings of fact recorded by the appellate authority in exercise of its jurisdiction under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act'). The dispute is about Survey No. 91. The appellant claimed by filing a Tenancy Case No. 31/1973 under Section 70(b) of the Act seeking declaration that he had become tenant of the land in dispute. Later on he filed a civil suit for injunction against the landlord. Since on the pleadings issue of tenancy arose the Court made reference under Section 85 of the Act to the Tehsildar for recording a finding whether the appellant was a tenant. Both, the claim filed under the Act and the reference made by the Civil Court were taken up by the appropriate, authority, namely, the Tehsildar and it was held in favour of the landlord. In appeal, the Order was set aside as the appellant was held to be cultivating tenant to whom the land had been let out by the respondents. In revision, the finding has been set aside by the Tribunal. The main dispute was if the appellant was a tenant from 1966 which fact stood reaffirmed when the agreement of sale dated 3-9-1969. was cancelled and a document was executed on 11-5-1970 for sharing of crop income on payment of Rs. 15,000/- as premium in advance. The tenant's claim was that the alleged payment of Rs. 15,000/- was returned by him. The revising authority compared the signature of the appellant on a receipt issued by the appellant in favour of the respondents and came to conclusion that it was not genuine. Further, it was held that the admission made by the landlord in his deposition in an earlier suit that the appellant was the tenant of Survey No. 91 was of no consequence as the appellant failed to produce the deponent and he relied on a certified copy without affording any opportunity to the respondents to explain it.

3. We have heard learned Counsel for parties. Although various issues were raised, but it appears unnecessary to refer to them. Nor it is necessary to advert to the findings recorded by the Tribunal and the appellate authority as we are satisfied that the Tribunal committed manifest error of law in discarding the admission of the respondents in Civil Suit No. 28/71. The appellant having filed certified copy of the statement, it was for the respondents to explain it and the adverse inference drawn by the revising authority against the appellant due to failure of filing any application for summoning the deponent does not appear to be well founded in law. The appellant had done what was possible for him to do by producing a certified copy of the statement of the respondents wherein he had admitted that the appellant was a cultivating tenant. It was for the respondent to explain the deposition either by examining himself or producing any material to nullify the effect of admission contained in the deposition. The revising authority, therefore, was not justified in recording the finding in favour of the respondents by setting aside the finding of fact recorded by the appellate

authority based on appreciation of evidence. Nor could the revising authority have entered into a com parson of signature on the receipt for the first time in exercise of its revisional jurisdiction. The Order of the revising authority, therefore, cannot be maintained both because it had exceeded its jurisdiction under Section 76 of the Act and it committed a procedural error in discarding the admission of the respondent.

4. In support of the Order passed by the Tribunal, the learned Counsel for the respondents relies on Section 32-O of the Act and urged that in view of these provisions the application filed by the appellant was not maintainable. From perusal of the Order dated 30th July, 1982 passed by the Sub-Divisional Officer, it appears that this aspect was raised by the landlord but it was not decided as the authority was of the opinion that this can be raised after the dispute is finally settled. We refrain from expressing any opinion at this stage on the correctness of the view taken by the Sub-Divisional Officer as it has not been examined either by the appellate authority or the revising authority.

5. In the result, the appeal is allowed and the Order passed by the High Court dismissing the writ petition filed by the appellant in limine and the Order passed by the Tribunal in exercise of its revisional jurisdiction under Section 76 of the Act are set aside. The matter is, however, remitted back to the Tribunal to decide it afresh on merits in accordance with law as expeditiously as possible. It shall be open to parties to raise all such contentions as are open to them, including the right of the parties arising out of Section 32-O of the Act. The parties shall bear their own costs.