

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8577 OF 2015

Vishwanath @ Narayan Shripati Hakim,
Age: 52 years, Occ: Agri.,
R/o. Bidar road near railway station,
Udgir, Tq. Udgir, Dist. Latur & ors.

...Petitioners

versus

Shantabai w/o Prabhurao Birajdar,
Age: 52 years, Occ: Household,
R/o. Malewadi, Tq. Udgir,
Dist. Latur & ors.

...Respondents

.....
Mr. Sudhir V. Kulkarni, Advocate for petitioners
.....

CORAM : N.W. SAMBRE, J.

DATE : 24th NOVEMBER, 2015

ORAL ORDER :

4th Joint Civil Judge, Junior Division, Udgir by order dated 19/12/2014 in the light of defence raised by respondents herein, has framed issue as regards tenancy of respondents over the suit property and order of referring the matter to the tenancy Court, which order is questioned in the present petition by the plaintiff.

2. Mr. Kulkarni, learned Counsel for the petitioners, while questioning the legality of the order, would urge that this is second round of litigation and in earlier round, order passed in Regular Civil Suit No. 132 of 1975 preferred by present petitioners has attained

finality upto second appeal, in which this Court has upheld the order of dismissal of prayer for declaration of ownership, however, granted liberty to the present petitioners-plaintiffs to seek possession of the suit property by taking recourse to appropriate remedy.

3. According to Mr. Kulkarni, learned Counsel for the petitioners, in the earlier civil suit i.e. R.C.S. No. 132 of 1977 the issue of tenancy was not raised by defendants-respondents and as such, they are precluded from raising this issue before the Court in fresh suit, that too when the suit has reached almost at concluding stage.

4. I am afraid, if the above referred submissions of the present petitioners cannot be accepted as same is not having any support in law. Even though arguments appear to be impressive, however, there is no answer to the same in the provisions of law, as it is open for the defendants to raise plea of tenancy, which is in my opinion, a question of law in their defence, which in any case, was not barred from raising such plea by any of the orders of the Court.

5. In view thereof, no case for interference is made Out. The writ petition fails, same stands dismissed.

[N.W. SAMBRE, J.]