

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

18. SA/240/2012

KESHAV GOPALRAO PATIL
V/S
GOPAL NAGORAO PATIL DIED DELETED AND ORS

Mr. S.S. Halkude, Advocate for appellant.

CORAM : T.V. NALAWADE, J.
DATED : 21st September, 2015.

ORDER :

1. The appeal is filed to challenge the judgment and order of Regular Civil Suit No. 307/2003, which was pending in the Court of Civil Judge, Junior Division, Ahmedpur and also the judgment and order of Regular Civil Appeal No. 63/2011 (new), which was pending in the Court of District Judge-1, Ahmedpur. The suit was filed for declaration that sale certificate dated 17.8.2014 issued under the provisions of Hyderabad Tenancy and Agriculture Lands Act is void. The certificate is issued in favour of defendant No. 3.

2. It is the case of plaintiff that the agricultural land Survey No. 1 (new Gat No. 6) and survey No. 28/2 (new Gat No. 74) were his ancestral properties. It is contended that there was some dispute between ancestors of plaintiff and one Tukaram

and at that time, defendant No. 3 used his influence and caused the ancestors of plaintiff to represent before tenancy authority that defendant No. 3 was in possession as tenant. It is contended that when defendant No. 3 was not tenant, the record of tenancy was created and then sale certificate was issued under the aforesaid Act to defendant No. 3. It is contended that due to fraud of defendant No. 3 sale certificate was issued and so, it needs to be set aside. Defendant Nos. 1 and 2 who were party to tenancy proceeding filed consent written statement.

3. Defendant No. 3 contested the suit. He contended that he was tenant and after making full inquiry and after following procedure, the sale certificate was issued. He contended that at the material time, plaintiff was even not born and defendant Nos. 1 and 2 have intentionally not joined as plaintiffs as the inquiry was done on the basis of proceeding started against them before the tenancy Court. The defence of law of limitation was also taken. Defence was taken that Civil Court has no jurisdiction in view of the provisions of Hyderabad Tenancy and Agriculture Lands Act.

4. The point of jurisdiction is considered by the Courts below. The case reported as **AIR 1974 Bombay High Court 28**

[Uttamchand Hukumchandsher & Ors. Vs. Vishwanath Bindraavan Bundelkhandi and Ors.] is considered by the Courts below and it is held that Civil Court has no jurisdiction to decide such question.

5. When the decision is given by the authority like Tenancy Court, one needs to go with presumption that proper procedure was followed. In such special legislation procedure is given to challenge the decision. Further, the said law provides that tenancy certificate shall be conclusive. Further, the certificate was issued in the year 1964 and the suit was filed in the year 2003. Thus, not only the point of jurisdiction was involved, but there was point of limitation also. This Court holds that the Courts below have not committed any error. Law is settled on this point. It is not possible to formulate only substantial question of law on the basis of contentions made by the appellant.

6. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/