

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

WRIT PETITION NO. 10054 OF 2009

(Nivrutti Mandu Salunke (Chor) Petitioner
versus
Laxman Pandu Salunke (Chor) and
others Respondents)

Mr. V.V.Pai, Advocate for the petitioner
Mr. V.B.Konde Deshmukh, Advocate for R-1 to 3

CORAM : R.K.Deshpande, J.
DATED : 2nd JULY, 2015.

P.C.

This petition challenges the order dated 01.07.2009 passed by the Maharashtra Revenue Tribunal, Mumbai, in Tenancy Revision No. 232/B/2003, filed under Section 76 of the Bombay Tenancy and Agricultural Lands Act, setting aside the order dated 10.11.2003 passed by the Sub Divisional Officer in Tenancy Appeal No. 9 of 2003 and confirming the order dated 28.02.2003 passed by the Tahsildar, Bhore in Tenancy Case No. 3 of 2001. The ultimate decision by the Tahsildar, which is confirmed by the Maharashtra Revenue Tribunal is that the land Survey No. 28, admeasuring 1 hectare and 64R and Survey No. 46, admeasuring 3 hectare and 15R was jointly held by the family members as tenants in common.

The learned counsel for the petitioner submits that the findings recorded by the Authorities below are based merely on the statements made by the respondents and Khand receipts executed by landlord at Exh. 31 to 41 and the agriculture cess paid under receipts at Exh. 51 to 61. He submits that the Tahsildar and the Maharashtra Revenue Tribunal have failed to appreciate the oral evidence laid by the petitioner and the revenue records including mutation entry No. 55 recorded in the year 1956, mutation entry No. 420 recorded in the year 1957 and the mutation entry No. 220 recorded in the year 1958 exclusively in the name of the father of the petitioner i.e. Mandu Pandu Salunke.

With the assistance of the learned counsels appearing for the parties, I have gone through the orders passed by the authorities below. The Tahsildar and the Maharashtra Revenue Tribunal has taken into consideration the evidence laid by the plaintiff and the entries recorded. It is held that Mandu was holding the land as a 'Karta' of joint family and Khand receipts and agriculture cess receipts indicate that the payments are made by the other members of the joint family. The oral evidence of one Gendba Malu Khopade has been rejected, holding that he is the son-in-law of the petitioner and therefore, an interested witness.

Undisputedly, in the partition dated 16.12.1957 between one Pandurang and his 4 sons, the properties were allotted excluding the lands in question which are Survey Nos. 28 and 46 for the reason that the tenancy proceedings were to be initiated in respect of it. After taking into consideration the entire evidence, the finding of fact is recorded by two authorities below, taking a possible view of the matter, which does not call for any interference in writ jurisdiction. The writ petition is, therefore, dismissed.

(R.K.DESHPANDE, J.)

Rvjalit