

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

LETTERS PATENT APPEAL NO.252/2003

IN

WRIT PETITION NO.1205/1987

Sawalram s/o Sakharam Mothe,
 aged about 37 Yrs., Occu. Agriculturist,
 R/o Wadgaon Mali, Tah. Mehkar,
 Distt. Buldhana.

..Appellant.

..Versus..

1. ~~Smt. Ratnamalabai W/o Madhukar Joshi,
 aged about 47 Yrs., Occu. Household Work,
 R/o Ward No.17, Mehkar, Tq. Mehkar,
 Distt. Buldhana.~~

(Deleted)

2. Kumari Alka D/o Madhukar Joshi,
 aged about 32 Yrs., R/o Near Mothe
 Hanuman Mandir, P & Tq. Nandura,
 Distt. Buldhana.

3. Ukanda s/o Appaji Aware,
 aged about 52 Yrs., Occu. Agriculturist,
 R/o Wadgaon Mali, Tah. Mehkar,
 Distt. Buldhana.

4. The Maharashtra Revenue Tribunal,
 Nagpur.

5. The Sub-Divisional Officer, Mehkar,
 Tq. Mehkar, Distt. Buldhana.

6. The Additional Tahsildar,
 Mehkar, Tq. Mehkar, Distt. Buldhana.

..Respondents.

AND LETTERS PATENT APPEAL NO.253/2003
IN
WRIT PETITION NO.812/1988

Sawalram S/o Sakharam Mothe,
 aged about 37 Yrs., Occu. Agriculturist,
 R/o Wadgaon Mali, Tah. Mehkar,
 Distt. Buldhana.

..Appellant.

..Versus..

1. ~~Smt. Ratnamalabai W/o Madhukar Joshi,~~
~~aged about 47 Yrs., Occu. Household Work,~~
~~R/o Ward No.17, Mehkar, Tq. Mehkar,~~
~~Distt. Buldhana.~~
2. Kumari Alka D/o Madhukar Joshi,
 aged about 32 Yrs., R/o Near Mothe
 Hanuman Mandir, P & Tq. Nandura,
 Distt. Buldhana.
3. Ukanda S/o Appaji Aware,
 aged about 52 Yrs., Occu. Agriculturist,
 R/o Wadgaon Mali, Tah. Mehkar,
 Distt. Buldhana.
4. ~~The Maharashtra Revenue Tribunal,~~
~~Nagpur.~~
5. ~~The Sub-Divisional Officer, Mehkar,~~
~~Tq. Mehkar, Distt. Buldhana.~~
6. ~~The Additional Tahsildar,~~
~~Mehkar, Tq. Mehkar, Distt. Buldhana.~~

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..Respondents.

 Shri S.R. Deshpande, Advocate for the appellant.
 Shri R.L. Khapre, Advocate for the respondent no.3.

.....(in both appeals)

CORAM : B.R. GAVAI AND Z.A. HAQ, JJ.

DATE : 15.12.2015

JUDGMENT (*Per Z.A. Haq, J.*)

1. These two letters patent appeals arise out of the common judgment passed by the learned Single Judge allowing the writ petition filed by the landlord and dismissing the writ petition filed by the tenant and rejecting the claim of the tenant for conferral of statutory ownership under Section 50 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "Tenancy Act of 1958").

The appellant filed an application under Section 50 of the Tenancy Act of 1958 contending that he was inducted as tenant in respect of the suit field by Smt. Ratnamalabai and Alka in April, 1978, that the appellant had given offer on 20th December, 1978 to Smt. Ratnamalabai and Alka for purchase of the suit field, however, as the offer of the appellant was not considered, the application was filed praying for declaration that the appellant was entitled for conferral of statutory ownership and for fixation of purchase price in respect of the suit field.

The Additional Tahsildar proceeded with the matter and by the order dated 31st March, 1981 concluded that the appellant had proved that he was inducted as tenant in respect of the suit field in April, 1978, that the appellant had given offer to purchase the suit field within one year as required and the appellant was entitled for conferral of statutory ownership in respect of the suit field. The learned Additional Tahsildar fixed

the purchase price and directed the appellant to pay the purchase price to the land owners.

It is undisputed that the suit field was sold by Smt. Ratnamalabai and Alka to Shri Ukanda Appaji Aware by the sale deed registered on 31st October, 1978. Shri Ukanda, who was impleaded as non-applicant in the proceedings before the Additional Tahsildar, filed appeal challenging the order passed by the Additional Tahsildar. The learned Sub-Divisional Officer allowed the appeal filed by Shri Ukanda by the order dated 18th March, 1986 and set aside the order passed by the Additional Tahsildar. The appellant being aggrieved by the order passed by the Sub-Divisional Officer had filed revision before the Maharashtra Revenue Tribunal, Nagpur which was dismissed by the order dated 13th January, 1987. The appellant being aggrieved in the matter, had filed Writ Petition No.1205/1987. Shri Ukanda filed Writ Petition No.812/1988 and challenged the order passed by the Maharashtra Revenue Tribunal and prayed that the order passed by the Sub-Divisional Officer be restored. The learned Single Judge decided both the writ petitions by the common judgment, dismissed the Writ Petition No.1205/1987 filed by the appellant and allowed the Writ Petition No.812/1988 filed by Shri Ukanda. The appellant being aggrieved in the matter, has filed these two letters patent appeals.

2. Shri S.R. Deshpande, learned advocate for the appellant has submitted that the

Additional Tahsildar had recorded the finding that appellant was inducted as tenant in respect of the suit field in April, 1978 and this finding was based on the evidence of Shri Bhagwan Pundalik, who was present at the time of agreement of tenancy. It is submitted that the Additional Tahsildar also relied on the entries in the crop statements which show the possession of appellant over the suit field in the relevant years. The learned advocate has submitted that the Sub-Divisional Officer wrongly interfered with the findings recorded by the Additional Tahsildar and overlooking the evidence of Shri Bhagwan Pundalik, the Sub-Divisional Officer wrongly concluded that the only witness at the time of agreement of tenancy was Dagdu Pethkar and he was not examined before the Additional Tahsildar. It is urged that the non-consideration of evidence of Shri Bhagwan Pundalik by the Sub-Divisional Officer i.e. final fact finding Authority vitiates the finding recorded by him and consequently, the order passed by him was unsustainable. It is submitted that the Maharashtra Revenue Tribunal rightly interfered with the perverse findings recorded by the Sub-Divisional Officer. It is submitted that the learned Single Judge has committed an error by not appreciating the above facts properly and it has resulted in the erroneous judgment.

The learned advocate has urged that the findings recorded against the appellant relying on the provisions of Section 43(2) of the Tenancy Act of 1958 that the application filed by the appellant under Section 50 of the Tenancy Act of 1958 was pre-mature, having been filed within 3 months from the date of the offer is also

unsustainable and it does not deprive the appellant of his right to continue as the permanent tenant in respect of the suit field. It is prayed that the letters patent appeals be allowed and the order passed by the Additional Tahsildar be restored.

3. Shri R.L. Khapre, advocate for the respondent no.3 has supported the impugned judgment. It is submitted that the suit field belonged to Shri Madhukar Joshi and after his death, Smt. Ratnamalabai, Ku. Alka and Shreekant became the co-owners of the suit field. It is submitted that the appellant was aware that Shri Shreekant s/o Madhukar Joshi was co-owner in respect of the suit field and this fact came on the record in the proceedings for correction of entries in the crop statements, but still the appellant had not impleaded Shreekant as party in the proceedings before the Additional Tahsildar. It is further submitted that Ku. Alka was minor in April, 1978 and Smt. Ratnamalabai could not have entered into any agreement of tenancy in respect of the suit field on her behalf. Shri Khapre, learned advocate has submitted that Smt. Ratnamala being co-owner of an undivided share in the suit field, had no authority to enter into agreement of tenancy. In support of this submission, reliance is placed on the judgment given by the Division Bench of this Court in the case of **Dajisaheb Ramchandra Raje V/s. Laxmanao Daulatrao** reported in **1965 Mh.L.J. N.O.C. 3**. It is prayed that the appeals be dismissed with costs.

4. After considering the submissions made by the learned advocates for the respective parties and examining the documents placed on the record of the appeals, according to us the following points arise for consideration:

(i) *Whether the appellant has proved that he was inducted as tenant in respect of the suit field, in April, 1978 ?*

(ii) *Whether the application filed by the appellant under Section 50 of the Tenancy Act of 1958 was pre-mature ?*

(iii) *Whether the impugned judgment is proper ?*

5. The appellant relied on the entries in crop statements for the years 1978 - 1979 and 1979 - 1980 and on the evidence of Shri Bhagwan Pundalik to contend that he was inducted as tenant in respect of the suit field in April, 1978. The learned Single Judge has dealt with these aspects and has recorded that the entries in crop statements are relevant only regarding the question of possession and are not relevant or conclusive for determining the legal character of the possessor. The learned Single Judge has rightly interfered with the order passed by the Tribunal observing that the Tribunal has committed an error by undertaking the exercise of re-appreciating the evidence exercising the revisional jurisdiction. The appellant has failed to establish that he was inducted as tenant in respect of the suit field in April, 1978.

6. The contentions relying on the provisions of Section 43(2) of the Tenancy Act of

1958 are also exhaustively dealt with by the learned Single Judge and the findings recorded by the Sub-Divisional Officer and maintained by the Maharashtra Revenue Tribunal that the application filed by the appellant was pre-mature, are upheld. The learned advocate for the appellant has not been able to point out any illegality in the findings recorded by the learned Single Judge. We see no reason to interfere in the matter. The appeals are dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

JUDGE

Tambaskar.