

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

APPEAL FROM ORDER NO. 49 OF 2007

1. Kalyan s/o Kashinath Naikwadi
[since deceased thr. L.Rs.] :

1-A. Vikas s/o Kalyan Naikwadi
Age : 35 Yrs., Occ. Agril.,
R/o : Ter, Tq. & Dist.
Osmanabad.

1-B. Shobha w/o Dinkar Sathe
Age : 57 Yrs., Occ. Household,
R/o : Mangrol, Tq. Tuljapur,
Dist.: Osmanabad.

1-C. Chhaya w/o Bapurao Langade
Age : 45 Yrs., Occ. Household,
R/o : Dhoki, Tq. & Dist.
Osmanabad.

2. Shahaji s/o Kalyan Naikwadi
Age : 43 Yrs., Occ. Agril.,
R/o : Ter, Tq. & Dist.
Osmanabad.

3. Tanaji s/o Kalyan Naikwadi
Age : 38 Yrs., Occ. Agril.,

R/o : Ter, Tq. & Dist.
Osmanabad.

.... APPELLANTS/
[ORI. DEFT. NOS. 3 TO 5]

V E R S U S

1. The State of Maharashtra
Through the Collector
Osmanabad, Tal. and Dist.
Osmanabad.

2. The Tahsildar
Osmanabad, Tal. and Dist. RESP.NOS. 1 & 2/
Osmanabad. [ORI. DEFT. NOS. 1 & 2]

3. Santram s/o Madhav Kale
Age : 60 Yrs., Occ. Agril.,
R/o : Ter, Tq. & Dist. RESP.NO. 3/
Osmanabad. [ORI. PLAINTIFF]

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Mr. A.S.Shelke, Advocate for Appellants.

Mr. A.R.Borulkar, A.G.P. for R.Nos. 1 & 2 – State.

Mr. B.R.Sable, Advocate for R.No. 3.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 8th FEBRUARY, 2016

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JUDGMENT :

1. The Appeal is filed to challenge the Judgment and Order of R.C.A. No. 180/2001 which was pending before the Ad-hoc District Judge – 1, Osmanabad. The District Court has set aside the Judgment and Decree of R.C.S. No. 98/1995 which was decided by the Civil Judge [Sr.Division], Osmanabad and the matter is remanded back for fresh trial by the District Court. Learned counsels for both sides are heard.

2. The Suit was filed by present respondent Santram Madhav Kale against the appellants for relief of declaration and possession under the provisions of the Specific Relief Act. It is his case that the Tenancy Court did not follow procedure as provided under the Hyderabad Tenancy and Agricultural Lands Act [for short, 'H.T. & A.L. Act'] and so the declaration given by the Tenancy Court u/s 38 (g) of the H.T. & A.L. Act deserves to be set aside by the civil Court. By filing Written Statement, present appellant contested the matter.

3. The trial court dismissed the Suit by holding

that the civil court has no jurisdiction and the decision of the Tenancy court had become final as the matter was taken up to the High Court and such points raised in the Suit were addressed in the tenancy proceeding. The District Court has held that it was necessary for the civil court to call the file of tenancy proceeding and then address following two grounds :

- [i] Whether there was previty of contract of lease between the landlord, the appellant and the defendant ?
- [ii] Whether in view of pencil entry made in the revenue record of the name of original defendant No. 3, so called tenant, it was necessary to hold that he was in possession of excess land, more than the permitted holding and so he was not entitled to the declaration u/s 38 (g) of the H.T. & A.L. Act ?

4. The District Court has placed reliance on some guide-lines given to ascertain the jurisdiction of the civil court in the case reported as *Dhulabhai etc. Vs. State of Madhya Pradesh & Anr. - AIR 1969 Supreme Court – 78.* The District Court has held that in view of the guide-lines and the facts and circumstances of the present matter, the entire file

of the tenancy proceeding ought to have been called by the civil court and then civil court ought to have given decision on the aforesaid points.

5. On the point involved, learned counsel for the appellant placed reliance on the case reported in 2009 (2) Mh.L.J. - 734 – Kashim Faridsaheb & Ors. Vs. Naseer Mohammad @ Ahmed s/o Walli Mohammad Chaudhari & Ors. In this case, this Court [other Hon'ble Judge] has considered the provisions of H.T. & A.L. Act and particularly the bar created to the jurisdiction of the civil court u/s 99. In that case also, declaration was claimed that certificate issued u/s 38-A of the H.T. & A.L. Act was null and void. It was held that there is scheme provided under the Tenancy Act and the decision given by the tenancy court can be challenged by filing proceeding like Appeal. It was held that the Suit was not tenable. In the present matter also, the aforesaid 2 points were raised before the tenancy court and the matter was taken up to the High Court. The High Court has confirmed the decision given by the tenancy court in favour of the present appellant.

6. In view of these circumstances, this Court has no hesitation to hold that the District Court has committed error in remanding the matter to the trial court for fresh trial. This decision can not sustain in law.

7. In the result, following order is made.

[i] Appeal from Order is allowed.

[ii] Judgment and Order of R.C.A. No. 180/2001 is hereby set aside.

[iii] R.C.A. No. 180/2001 stands dismissed.

[T.V.NALAWADE, J.]