

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

**Second Appeal No. 272 of 2013  
With  
Civil Application No.5397 of 2013**

Bhurekhan S/o. Rehmat Khan  
Deceased through legal  
representatives.

**.. Appellant.**

**Versus**

The State of Maharashtra  
And Another.

**.. Respondents.**

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Shri. A.N. Nagargoje, Advocate, for appellant.

Shri. S.D. Kaldate, Assistant Government Pleader, for  
respondents.

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**CORAM: T.V. NALAWADE, J.**

**DATE : 10<sup>th</sup> MARCH 2016**

**ORDER:**

1) The appeal is filed against the judgment and decree of Regular Civil Suit No.43/2001 which was pending in the Court of the Civil Judge, Senior Division, Ambajogai, District Beed and also against the judgment and decree of Regular Civil Appeal No.102/2008 which was pending in the Court of District Judge-II, Ambajogai. The suit of the appellant filed for reliefs of declaration of

ownership, possession and injunction is dismissed by the trial Court and the first appellate Court has confirmed this decision. Both the sides are heard.

2) The suit was filed in respect of agricultural land, some portion of Survey No.603, admeasuring 31 acres 20 gunthas situated at Ambajogai, District Beed. It is the case of the plaintiff, appellant that the land was originally owned by one Harising Rajput and it was ancestral property of Harising. It is contended that Harising had given this land for cultivation to the plaintiff prior to the year 1950 and since then the plaintiff has been in possession of the property. In the plaint itself plaintiff has contended that only some portion was under cultivation on the date of the suit.

3) It is the case of the plaintiff that from the years 1952 to 1956 some portion was taken over by the then Government for military purpose and then it was taken over by Cantonment Board. It is contended that only small portion was taken over for military purpose but that possession was also illegal.

4) It is the case of the plaintiff that revenue entry was made in favour of the defendants dated 5-6-1959 but the title is not passed in favour of the defendants, the Agriculture School of the Government. It is contended that no acquisition proceeding was started by the Government for acquiring the land from the owner and so the owner did not lose the title. It is contended that as the land was under cultivation of the plaintiff prior to the year 1950, he became protected tenant of the suit land. It is contended that even after aforesaid mutation plaintiff continued to enjoy the possession of the land. It is contended that in the year 2001 the defendants gave notice to him and asked him to remove the encroachment allegedly made by him and so cause of action took place for the suit.

5) The defendants filed written statement and denied that one Harising Rajput was owner of aforesaid land. They also denied that Harising had given possession of the suit land to the plaintiff for cultivation prior to 1950. The other contentions of the plaintiff of having rights of protected tenant etc. are also denied.

6) It is the case of the defendants that suit land and other lands were acquired by the Government for Seed Farm in the year 1957-58. It is contended that for some time the land was given under the control of Zilla Parishad Beed for maintenance of the Seed Farm. It is contended that as the Agriculture School was started the land was handed to the school in the year 1960. It is contended that initially the land was mutated in the name of the Agriculture School. It is contended that in the year 1974 the suit land and other lands were given to Agriculture University and since then these lands are with the said Agriculture University of Parbhani. It is contended that plaintiff made encroachment over some portion by putting thorny fencing but he has no right or interest in the suit property. It appears that during pendency of the suit, plaintiff contended that he lost possession in the year 2002.

7) The issues were framed on the basis of aforesaid pleadings. Evidence was given by both the sides. The trial Court held that the plaintiff is not the owner, he has not become owner under the Tenancy Act. The trial

Court held that the land was acquired by the State Government in the year 1957-58. The trial Court held that it is not necessary to refer the dispute to the Tenancy Court in view of the nature of reliefs claimed and the nature of record available. The trial Court held that plaintiff was not in lawful possession over any specific portion of the suit property on the date of the suit. The trial Court also held at the end that the plaintiff failed to prove that the defendants took possession illegally from the plaintiff.

8) The plaintiff examined himself and some witnesses but there is only oral evidence in support of the contention that Harising Rajput was owner and Harising had given the land to the plaintiff prior to the year 1950. Some record like crop Pahani Patrak was produced but there is no revenue record with the plaintiff for period prior to the year 1960. On the other hand record of pre-1960 shows that the land was in possession of military. For some time the name of the plaintiff was entered in the revenue record as simple tenant but not the protected tenant. Subsequently this name was also removed. The

order of removal of the name was not challenged by the plaintiff.

9) Exhibit 81 - Shetwar Patrak shows that name of Harising was shown as holder but at that time also there was name of the Government shown in the revenue record. In Exhibit 82, the land Survey No.603 was described as "हिरासिंगाचे" but at that time also there was name of the Government. It was shown that the Military was occupying the land from prior to the years 1956-57. Thus, there is no record showing that Harising was owner in the year 1950 and prior to 1950 Harising had given the land to the plaintiff for cultivation.

10) At Exhibit 83 there is revenue document showing the name of the Military and the land was given to the Seed Farm by the Government and this record is consistent with the case of the defendants. This Mutation No.408 was not challenged by the plaintiff. Exhibits 84 and 85 also show that Government was owner from prior to 1960. Thus there is no record with the plaintiff to show that he was in possession prior to 1950 he was in

possession as protected tenant. It was not possible to infer that he was protected tenant. On the contrary, his name was entered only as simple tenant for some time but it was subsequently removed and that decision of the authority is not challenged.

11) In substantive evidence, the witness of the plaintiff admitted that there are buildings of Agriculture School, office of the Agriculture School, residential quarters and hostel of the boys. Further the plaintiff contended in the evidence that in the year 2002 he lost possession to the defendant No.2.

12) The witnesses of the defendants have given evidence that the land was acquired for Agriculture School by the government and it was initially handed over to Zilla Parishad for maintenance of the Seed Farm. Evidence is given that as per Mutation Entry No.408 sanctioned in the year 1959 the land was entered in the name of the Agriculture School. It is not disputed that there is construction over the suit land. There is record also to show that since the year 1974 the land is with the

Agriculture University Parbhani. Government Resolutions are produced. Thus from the years 1957-58 onwards there is record to show that the Government was the owner. Initially there was Seed Farm, the Agriculture School and then there is Agriculture University. Only because it is contended by the plaintiff that he was protected tenant, in such cases matter cannot be referred to Tenancy Court.

13) It was submitted for the appellant, plaintiff that in the first appeal prayer was made to refer the matter to the Tenancy Court and the District Court had observed that such prayer will be considered at the time of final hearing. It was submitted that in the trial Court also such prayer was made but both, the trial Court and the first appellate Court, have not given decision on this request. This submission is not at all acceptable. The judgments given by the Courts below and the circumstances mentioned above show that there was no necessity to refer such contention to the Tenancy Court. It needs to be presumed that this request is turned down.

14) If the plaintiff was really the tenant or in possession of some portion as tenant of Harising or his successor he could have approached the tenancy Court to establish his rights. Such steps were not taken and only when he was asked to remove the encroachment he approached the Civil Court. As the plaintiff was not the owner and he could not have become owner of the suit land even under the Tenancy Act, declaration of ownership cannot be given to him. He has admitted that he is not in possession now though he contended that he lost possession over the entire portion in the year 2002. Thus, there are concurrent findings on the points involved in the matter. It is not possible to interfere in the second appeal. No substantial question of law as such is involved.

15) In the result, the second appeal stands dismissed. Civil Application stands disposed of.

Sd/-  
**(T.V. NALAWADE, J. )**

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