

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10163 OF 2015

Kishore Yeshwant Potphode ... Petitioner
Vs.
Shantabai Janardan Kowale and others ... Respondents

Mr. Saurabh M. Railkar for Petitioner.
Mr. Santaram Tarale for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : 26TH FEBRUARY 2016

P.C. :

Heard Mr. Railkar, learned Counsel for petitioner and Mr. Tarale, learned Counsel for respondents No.1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 24.06.2015 passed by the learned Civil Judge, Junior Division, Rajapur below exhibit-59 in Regular Darkhast No.11 of 2013. By that order, the learned trial Judge rejected the application made by the petitioner for framing issues suggested in the application exhibit-59.

3. It is not in dispute and is rather evident from record that Ram Laxman Potphode instituted proceedings under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'Act') against – (1) Yashwant Keshao Potphode and (2) Mahadeo Laxman Potphode for declaration that Yashwant is tenant to the extent of ½ share of Ram Laxman Potphode in Survey No.42, Hissa No.25 situate at Village Talgaon, Taluka Rajapur. That application was rejected by the Tenancy Awal Karkun, Rajapur on 07.01.1965. Aggrieved by that decision, Yashwant Potphonde instituted RTS Appeal No.21/1970 before Sub Divisional

Officer, Ratnagiri. By order dated 13.07.1973, appeal was dismissed. Aggrieved by that decision, Yeshwant Keshav Potphode instituted Revision Application before Maharashtra Revenue Tribunal (for short 'M.R.T.'). By order dated 22.07.1974, Revision Application preferred by Yeshwant was dismissed. Writ Petition instituted by Yeshwant Potphode was rejected by this Court. It is common ground between the parties that Yeshwant thereafter did not challenge the orders passed in proceedings under Section 70(b) of the Act and they attained finality.

4. It is also not in dispute and is rather evident from the record that Shantabai Janardan Kovale and Subhash Janardan Kovale, daughter and grandson respectively of Mahadeo Potphode instituted Civil Suit No.35/86 against Yeshwant Keshav Potphode, Kishor Yeshwant Potphode (petitioner herein) and 6 others for perpetual injunction restraining the defendants from interfering with their possession and Vahivat and in the alternate for possession of land bearing blocks No.562 admeasuring 0-45-5 Ares and 566 admeasuring 0-35-4 Ares situate at Village Talgaon, Taluka Rajapur, District Ratnagiri. The learned trial Judge decreed the Suit of plaintiff No.1 and dismissed the Suit of plaintiff No.2 and issued injunction restraining defendants No.1 to 8 from disturbing possession and vahivat of plaintiff No.1 over the suit property. Aggrieved by this decision, defendants preferred Civil Appeal No.100 of 1991. By order dated 18.08.1993, Appeal was dismissed and the trial Court's order was modified. The Suit of plaintiff No.2 Subhash Kovale was decreed only in respect of land bearing Survey No.42/31 instead of plaintiff No.1. The learned District Judge also decreed the Suit of plaintiff No.2 in respect of possession of land bearing Survey No.44/1 and 43/16. Aggrieved by this decision, defendants No.1 to 8 instituted Second Appeal No.571 of 1993 in this Court. It appears that the Second Appeal was dismissed for not removing office objections. Civil Application No.746 of 2013 was

taken out for condoning the delay of 11 years and 343 days in filing the application. By order dated 19.07.2013, Civil Application was rejected, which resulted into dismissal of the Second Appeal. It is common ground between the parties that defendants No.1 to 8 thereafter did not challenge the said order. In other words, the decree passed by the learned District Judge on 18.08.1993 has attained finality.

5. Respondents No.1 and 2 have filed Regular Darkhast No.11 of 2013 for execution of decree passed on 18.08.1993. In that Darkhast, petitioner has filed application exhibit-59 for framing issues. By the impugned order, the learned trial Judge has rejected the application.

6. Mr. Railkar submitted that petitioner had instituted proceedings under Section 70(b) of the Act before Tahsildar, Rajapur being Tenancy Case No.21 of 2014 for declaration of tenancy in respect of Gat No.562 and 566 (for short 'these lands'). By order dated 14.11.2014, Tahsildar declared that petitioner is tenant in respect of these lands after 01.04.1957. Aggrieved by that decision, respondent No.2 preferred Tenancy Appeal No.58 of 2014 before the Sub-Divisional Officer, Rajapur under Section 74 of the Act. That appeal is allowed on 18.06.2015 and the order of the Tahsildar dated 14.11.2014 is quashed and set aside. Aggrieved by that decision, petitioner has instituted Revision Application (L) No.177 of 2015 in Maharashtra Revenue Tribunal and the same is pending for final disposal.

7. Having regard to the decision of the tenancy authorities in Tenancy Case No.235 of 1964 as also the decision of Civil Court in Suit No.35 of 1986, I do not find that the learned trial Judge has committed any error in passing the impugned order. The learned trial Judge has referred to the tenancy proceedings as also civil court proceedings, and

thereafter observed that parties can substantiate their pleas by leading evidence. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. Mr. Railkar states that the executing Court has fixed the date of 23.03.2016 for issuing possession of warrant. Mr. Tarale states that Gurunath Janardan Kovale, son of respondent No.1 and brother of respondent No.2 is present in the Court. He has tendered photocopy of PAN card of Gurunath Janardan Kovale, which is taken on record marked 'X' for identification. Upon taking instructions from him, Mr. Tarale submits that in the event of respondents No.1 and 2 getting possession of these lands, they will neither create third party interest nor part with possession and will abide by the decision in the Revision Application pending in M.R.T. subject to their right to challenge the decision in case it goes against them. Statement made by Mr. Tarale, on instructions, is recorded. Subject to that, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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