

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10221 OF 2015

Bhimrao D. Patil (deceased through heirs)

1] Yashoda B. Patil (deceased through heirs

A] Sou. Mangal V. Patil & ors) and others. .. Petitioners

vs.

Smt. Krishnabai S. Jadhav (deceased through heirs)

1] Shri. Ramchandra S. Jadhav (deceased through heirs

A] Shri. Santosh R. Jadhav & ors.) and others .. Respondents

Mr. G.S. Godbole a/w. Mr. V.B. Rajure for the Petitioners.

Mr. S.G. Karandikar a/w. Mr. Sandip S. Koregave for Respondent
Nos.1A and 1B.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 07 January 2016.

Date of Pronouncing the Judgment : 14 January 2016.

JUDGMENT :-

1] By this petition under Article 227 of the Constitution of India,
the Petitioners challenge the following judgments and orders:

a] Judgment and order dated 3 August 1989 made by the
Tahsildar, Hatkanagle declaring that the Petitioners are not the
tenants in respect of the suit property;

b] Judgment and order dated 30 December 1996 made by
the Sub-Divisional Officer, Ichalkaranji (SDO), dismissing the
Petitioners' appeal against the judgment and order dated 3
August 1989; and

c] Judgment and order dated 21 June 2014 made by the

Maharashtra Revenue Tribunal, Pune (MRT), dismissing the Petitioners' revision application against the judgment and order dated 30 December 1996.

2] Thus, the challenge in this petition is to the impugned judgments and orders, by which the Thasildar, SDO and MRT have concurrently held that the Petitioners are not the agricultural tenants in respect of suit property, which is an agricultural property ad-measuring approximately 1 Hectare and 0.72 Ares.

3] Mr. Godbole, the learned counsel for the Petitioners, has basically raised two submissions in support of the present petition:

(a) That the application made by the Respondents seeking '*negative declaration*' was barred by the law of limitation prescribed under Section 5(3) of the Mamlatdar's Court Act, 1906 (said Act); and

(b) That the findings of fact recorded by the three authorities are vitiated by perversity, since the admission of the landlady that the predecessor-in-title of the Petitioner, i.e., Bhimrao Patil (Bhimrao), was the tenant of the suit property has been ignored.

4] In the context of first ground, Mr. Godbole submitted that the landlady in her statement dated 28 January 1986 recorded in proceedings relating to mutation in survey entries, had herself stated that the predecessor-in-title of the Petitioners, i.e., Bhimrao was cultivating the suit property and reaping sugarcane harvest. Further, the dispute with regard to entries in survey records had arisen between the parties in the year 1986 itself and in fact, by the judgment and order dated 29 January 1986, the Tahsildar had directed the inclusion of name of Bhimrao Patil in the Crop's statement from the year 1982-83 onwards. Mr. Godbole contended that all this indicates that the cause of action for seeking negative declaration arose in January 1986 and the application made by the Respondents seeking negative declaration, some time in the year 1988, was clearly barred by limitation prescribed under Section 5(3) of the said Act.

5] Mr. Godbole made reference to the provisions contained in Section 72 of the Maharashtra Tenancy and Agricultural Land Act, 1948 (Tenancy Act) to contend that in all enquiries and proceedings commenced on the presentation of the application under Section 71 of the Tenancy Act, the Mamlatdar or Tribunal shall exercise the

same powers as the Mamlatdar's Court under the Mamlatdars' Court's Act, 1906 and shall follow the provisions of the said Act. Further, Mr. Godbole placed reliance upon the provisions contained in Section 5(3) of the said Act to contend that no suit shall be entertained by the Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arises. Reliance was also placed upon the decisions of this Court in case of *Devrav Sahebrav Ghumare vs. Gopalrao B. Sole and ors.*¹ and *Mahadu Genu Dudhane vs. Maruti Genu More and ors.*².

6] The Tahsildar and MRT have rejected the contention that the application seeking negative declaration was barred by law of limitation. There is neither any error apparent on face of record nor there is any perversity of approach in rejecting such contention. The statement dated 28 January 1986, upon which reliance was to be placed by Mr. Godbole, was itself doubted by the appellate authority hearing the appeal against the order dated 29 January 1986, by which the name of Bhimrao was directed to be included in crop's statement. Incidentally, the judgment and order dated 29 January 1986 was set aside by the appellate authority. In any case, the

1 Special Civil Application No. 707 of 1958 decided on 17/6/1958

2 Special Civil Application No. 411 of 1959 decided on 16/10/1959

statement relates to entries in crop's statement on basis of the same, it cannot be said that cause of action had accrued to the landlady to seek negative declaration. The authorities have rightly considered the circumstance that the landlady, some time thereafter, had instituted a civil suit seeking injunction against Bhimrao Patil and in the written statement filed by the Bhimrao Patil, there was no assertion of any alleged tenancy in respect of the suit property. The cause of action pleaded in the application seeking negative declaration refers to attempt on the part of Bhimrao Patil to interfere with the landlady's possession and claim of tenancy. The deposition on behalf of the Petitioners has also been considered by the authorities in the context of their claim of tenancy. Based upon all such materials, the authorities have concurrently held that the application seeking negative declaration was not barred by law of limitation. As noted earlier, there is no perversity in the record of such findings.

7] The two decisions in case of *Devrav Ghumare (supra)* and *Mahadu Dudhane (supra)* were relied upon and followed by the Full Bench of this Court in case of *Panpoi Dharmal Sansthan Dhot Arkherda Vs. Bhagwant s/o. Maroti Dhakulkar & ors.*³, wherein

3 1989 Mh.L.J. 710

the question referred was whether limitation of six months as prescribed by sub-section (3) of Section 5 of the said Act would govern the application filed under Section 100 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (Vidarbha Region Act). The Full Bench, in para '3' of its judgment and order, had itself noted that sub-section (2) of Section 100 of the Vidarbha Region Act, is *pari materia* to Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1947. The Full Bench upon taking into consideration the aforesaid two decisions answered reference by holding that the period of limitation as prescribed in the Mamlatdar's Courts Act, will apply.

8] The Hon'ble Supreme Court in case of ***Panpoi Dharmal Sansthan Dhot Arkherda Vs. Bhagwant & ors.***⁴ has however, specifically reversed the decision of the Full Bench. In such circumstances, the reliance upon the decision in case of *Devrav Ghumare (supra)* and *Mahadu Dudhane (supra)*, was quite misplaced.

9] Mr. Godbole then contended that the decision of the Hon'ble Supreme Court was on the basis that the party claiming tenancy had

4 (2000)9 SCC 307

continued in possession of the suit property and such continuance in possession, constituted a continuing wrong. Apart from the circumstance that such is not the correct manner of interpreting the decision of the Hon'ble Supreme Court, even in the facts and circumstances of the present case, the Petitioners contend that they continue in possession of the suit property and the Respondents have instituted a civil suit for the purposes of recovery of possession. As such the distinction, attempted to be made by Mr. Godbole, lacks merit and in any case, is inapplicable to the facts and circumstances of the present case.

10] Insofar as the second contention raised by Mr. Godbole is concerned, it must be noted that in the first place there is no clear admission as regards the tenancy and secondly, it is not correct to say that the authorities have not bestowed due consideration of this issue. The statement, upon which Mr. Godbole placed reliance, was not made in the proceedings concerning tenancy. But rather, the same was in the context of entries in revenue records, i.e., entries in crop's statement. The statement, at the highest makes reference to certain aspects of possession, but that by itself does not constitute any admission as to the status of tenancy. The authorities have

considered the material on record in its entirety. The authorities have rightly held that the Petitioners were unable to produce any material on record to establish that they are the tenants of the suit property. The materials on record does indicate that the Petitioners were bent upon taking advantage of the situation that the landlady at some stage, was relying upon water source from the Petitioners adjacent property and further, certain sugarcane sales were effected in the name of the Petitioners. The authorities have rightly appreciated the circumstance that the Petitioners were not the members of the Sugar Co-operative Society and it is therefore, on some occasion, sugarcane sales were effected in the name of the Petitioners. That by itself was by no means sufficient to hold that the Petitioners are the tenants in respect of the suit property. There is no perversity involved in the concurrent findings of fact recorded by the three authorities.

11] Accordingly, no case is made out to entertain the present petition and same is dismissed. There shall, however, be no order as to costs.

(M. S. SONAK, J.)