

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2610 OF 1998

- 1). Shri. Raosaheb Baburao Gabhane
(since deceased) through his heirs
and legal representatives
- 1A Sarjerao Raosaheb Gabhane
Aged about 38 years, Occ. Agri.
R/o :Vadgaon Shinde, Post Wagholi,
Tal. Haveli, Dist. Pune.
- 1B Smt. Vimal Madhavrao Arekar,
Aged 55 years, Occ. : Household,
R/o : 431, Mangalwar Peth, Pune
- 1C Hirabai Sitaram Takale,
Age : 52 years, Occ. Household
R/o : At & Post Talegaon Dabhade,
Tal. Maval, Dist. Pune
- 1D Godabai Raosaheb Gabhane,
Age 72 years, Occ.: Household
R/o :Vadgaon Shinde, Post. Wagholi,
Tal. Haveli, Dist. Pune
- 1E Sou. Saraswati Madhavrao Kadus,
Age : 50 years, Occ.: Household
R/o : At & Post Mandavgan Farata,
Tal. Shirur, Dist. Pune
- 1F Sou. Suman Balasaheb Shinde,
Aged : 33 years, Occ.: Household
R/o : At & Post Oravade Ambegaon,
Tal. Mulshi, Dist. Pune
- 1G Amruta Raosaheb Gabhane,
Aged : 54 years,
R/o : At Vadgaon Shinde, Post Wagholi,
Tal. Haveli, Dist. Pune

(amendment is carried out vide Addl. Registrar's order dtd. 11th June, 2001 passed in C.A. No.807/2001)

Vs.

- 1). Shri. Dattu Shankar Gabhane
R/o : 720, Taboot Street,
Pune Camp, Pune – 411 001
- 2). Shri. Dinkar Baburao Gabhane
R/o.: Vadgaon Shinde Tal. Haveli,
Dist. Pune
- 3). Shri. Genba Baburao Gabhane
Since deceased by LRs
(a) Ramchandra Genba Gabhane
(b) Nivrutti Genba Gabhane

Both r/o Vadgaon Shinde,
Tal. Haveli, Dist. Pune
- 4). Shri. Dehukar Baburao Gabhane
Residing at as above
- 5). Shri. Namdeo Narayan Gabhane
Since deceased by L.R.
Deepak Namdeo Gabhane
R/o: Rasta Peth, Pune 411 001
- 6). Shri. Bhikan Vitthal Gabhane
R/at as above
- 7). Shri. Kisan Vitthal Gabhane
Since deceased by L.R.
Smt. Indubai Vitthal Gabhane
R/at 715, Tabut Street, Camp,
Pune – 411 001 (since deceased)
Thru' her LRS.

(a) Vimal Khanderao Paygude
Age : 45 years, Occ. Household
R/at 715, Tabut Street, Camp,
Pune – 411 001

- (b) Kamal Sathe,
Age: 50 years, Occ.Household,
R/o : Alandi Road, Phule Nagar Zopadpatti,
Opp. RTO office, Pune

(Amendment carried out as per Court order
Dt.25/11/2005 in CA No.2/05)

- 8). Shri. Shivaji Dnyanoba Gabhane
R/at as above
- 9). Shri. Vasant Dnyanoba Gabhane
R/at as above
- 10). Shri. Yeshwant Yadavrao Gabhane
Deceased by L.R.
Shri. Popat Yeshwant Gabhane,
R/at Vadgaon Shinde, Tal. Haveli,
Dist. Pune

: Matter shall stand
dismissed as against
Resp. nos. 3b, 5, 6 &
10 as per Addl. R's
Ct.order dt.12/4/2001

- 11). Shri. Tukaram Kashinath Gabhane
R/at Bhavadi, Tal. Haveli,
Dist. Pune
- 12). Shri. Sakharam Kashinath Gabhane
R/at as above
- 13). Shri. Dhondiba Kashinath Gabhane
R/at as above
- 14). Shri. Bajirao Kashinath Gabhane
R/at as above.

... Respondents

Mrs. Anjali A. Helekar, Advocate for the petitioners.
Mr. S. M. Gorwadkar a/w Mr. Mankirat Singh, Advocate for
respondent no.1.

Coram : Smt. R. P. SondurBaldota, J.

Date : 16th June, 2016

JUDGMENT :

1. This petition challenges the order dated 15th April, 1998 passed by the Maharashtra Revenue Tribunal allowing the revision application filed by respondent no.1.

2. The brief factual history of the petition is that respondent no.2 had filed Regular Civil Suit No.1037 of 1978 before the 3rd Jt. Civil Judge Junior Division, Pune for partition and possession of the suit property contending that he and his brothers i.e. original defendants no. 2 to 4 have one half share therein with the remaining half share belonging to original defendant no.1 who is respondent no.1 to the petition. The petitioner is original defendant no.2. He contested the suit disputing the claim of respondent no.2 to a share in the suit property. According to him, the land belongs to respondent no.1 alone. He had by an oral agreement created tenancy in respect of the land in favour of the petitioner. As such the petitioner had been cultivating the land for about 20 years and paying rent. Respondent no.1 disputed the claim of the petitioner of tenancy. The trial Court then framed issue of tenancy and referred the same under Section 85-A of Bombay Tenancy and Agricultural Act, 1948 ('The Tenancy Act', for short) to the Agricultural Lands Tribunal ("A.L.T." for short). The Divisional Tahasildar and A.L.T., Haveli, conducted enquiry and answered the question in the affirmative. It held that the petitioner is the tenant in respect of the Gat Nos.4 and 5 as claimed in the written statement. Being aggrieved by the order respondent no.1

preferred Tenancy Appeal No.29 of 1990 to Sub-Divisional Officer. By the order dated 21st August, 1991, the appeal came to be dismissed. He then approached the Maharashtra Revenue Tribunal (hereinafter "the Tribunal") by way of Revision Application.

3. A.L.T. and the Sub Divisional Officer held that the entries in V.F.VII-A register show that the land was cultivated by the petitioner from 1972-1973 to 1989-1990. He had raised various crops. Respondent no.1 claimed before them that the land is kept fallow since the year 1978 which is supported by the entries. However, both the authorities observed that the permanent residence of respondent no.1 at Pune and long period of cultivation by the petitioner indicates that the petitioner is the tenant in respect of the land, next based on three receipts for payment of land. Revenue for the years 1972, 1975 and 1979, the authorities observed that the petitioner was directly concerned with the affairs of the suit land. The petitioner had produced one rent receipt and one letter allegedly from respondent no.1, the authenticity of which was disputed. The petitioner had failed to prove the two documents.

4. The Tribunal noted one material lapse on the part of the petitioner. It noted that though the petitioner claimed to be in cultivation in the Tiller's day i.e. 1st April, 1957, there was no evidence whatsoever produced by him to establish the claim. Also his statement recorded in the year 1990 was inconsistent with the claim. He stated that since prior to 25/26 years of the statement, he had been cultivating the land. Thus as on the Tiller's day, he was not the

tenant. As regards the subsequent period, it was noted that the 7/12 extract indicated the cultivation as the personal cultivation by the owner. If cultivation was by agricultural tenant the mode of cultivation recorded in the 7/12 extract would have been in "Reet no.3". The mode of cultivation recorded in 7/12 extract thus negated the claim of tenancy.

5. The Tribunal also noted the document dt. 3rd August, 1989 described as "Khand Patra" produced by the petitioner. The records that the lease of land was on the basis of crop share and that the rent for the past 25 years had been received. Such recital in the document was strange. Further signature of respondent no.1 on the stamp was not visible. Therefore, the document was found to be suspicious.

6. The next document produced by the petitioner was letter dt.13th March, 1980 from respondent no.1 which only disclosed demand of jowar crop by respondent no.1 from his servant. The Tribunal also noted the circumstance of the petitioner keeping quiet. Since the year 1972-1973 and not moving an application under Section 32-O. There is not even a notice issued to communicate desire to purchase the land. Hence, purchase of the land by the tenant has become ineffective.

7. The Tribunal found that none of the above aspects have been considered by the authorities below. It has also observed that there are no cogent findings given by them.

8. The impugned order exhaustively discusses the entire material produced by the petitioner. None of these aspects are seen to have been considered by the A.L.T. and Sub Divisional Officer. Therefore, the impugned order is completely justified. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]