

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

WRIT PETITION NO.92 OF 1994

Shankar D. Patil and Ors.

.. Petitioners

vs.

Nanasaheb Balasaheb Yadav

.. Respondent

Mr.S.M.Kamble for the petitioners

Mr.PD.Dalvi for the respondent

CORAM : K. K. TATED, J.

DATE : JULY 20, 2017

P.C.:

1. Heard.

2. By this petition under Article 227 of the Constitution of India, the petitioners are challenging the order dated 12.08.1993 passed by learned Member, Maharashtra Revenue Tribunal, Kolhapur in Revision Application No.MRT-KP-175/1991 confirming and upholding the order dated 30.09.1991 passed by learned Sub-Divisional Officer, Karvir, Sub-Division, Kolhapur in Tenancy Appeal No.98 of 1990 and the order dated 30.11.1990 passed by Tenancy Aval Kurkun, Karvir in Tenancy Case No.14 of 1989.

3. For the sake of convenience, the parties will be referred to as per their nomenclature in the suit i.e. petitioners as defendants and

respondent as plaintiff.

Few facts of the matter are as under:

4. Initially the plaintiff filed Regular Civil Suit No. 872 of 1982 against the defendants on 7.6.1982 for recovery of arrears of rent in respect of agricultural land admeasuring 1 H. 15 R. from Survey No.619/4 situated at Kasaba Bawada, Dist.Kolhapur. In that Suit, the issue involved was 'what is the reasonable rent of the land?' and that was referred to the Revenue Authority. Hence, the tenancy case No.14 of 1989 was registered in the court of Tenancy Aval Kurkun, Karvir under section 85 of the Maharashtra Tenancy and Agricultural Lands Act, 1948. The said Act was earlier known as Bombay Tenancy and Agricultural Lands Act, 1948. The Tenancy Aval Kurkun, Karvir by its judgment dated 30.11.1990 considering the fact that there was no lease deed and or agreement on record between plaintiff and defendants, on the basis of 7/12 extract and agreement dated 20/7/1957 with Kolhapur Sugar Factory held that the defendants were using the suit land for cultivating the sugar cane.

5. Considering the judgment of this court in Special Civil Application No.267 of 1968 dated 3.2.1972 between Ananda Supdu Bhangale vs. R.A.Deshpande (Malvankar, J.) under section 9 of the said Act, held that the yearly rent of the suit property should be Rs.2,427/-.

6. Being aggrieved by the said order, the defendants preferred Tenancy Appeal No.98 of 1990 under section 74 of the said Act before the Sub-Divisional Officer, Karvir, Sub-Division, Kolhapur. The Sub-Divisional Officer considering the evidence on record confirmed the order passed by learned Tenancy Awal Karkun, Karvir.

7. Being aggrieved by the orders passed by the Sub-Divisional Officer, the defendants preferred Revision Application before the Maharashtra Revenue Tribunal, Kolhapur. The same was also stand rejected by judgment dated 12.8.1993.

8. By this petition, the petitioners / defendants under Article 227 of the Constitution of India is challenging the concurrent finding of fact recorded by all the three authorities below.

9. It is the case of the defendants that all the authorities below failed to consider the relevant and important fact that the plaintiff failed and neglected to place on record the agreement between plaintiff and defendants in respect of the suit property. He submits that actually the suit property was given to the defendants on rental basis @ Rs.300/- per year being paddy land. He submits that the authorities below erred in coming to the conclusion that just because the defendants were growing sugar cane in the land and there was agreement between defendants Kolhapur Sugar Factory dated 20.7.1957 for supply of sugar cane held that defendants are liable to pay rent @ Rs.2,427/- per annum. He submits that though the authorities below relied on notification issued under section 9 of the said Act the same was not on record for deciding the rent on the basis of average yield of the suit property. He further submits that if it is considered that the suit property was given on rent basis for cultivation of sugar cane then the provisions of section 43-A and B of the said Act are not applicable at all. These facts were not considered by all the authorities below and therefore, the orders passed by the authorities are required to be set aside by holding that rent payable in respect of

suit property is only Rs.1,600/- p.a.

10. On the basis of these facts and submissions, the learned counsel for the defendants submits that this Hon'ble Court be pleased to allow the present Writ Petition holding that the defendants are liable to pay rent only @ Rs.1,600/- per annum and not Rs.2,427/- per annum.

11. On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that there is a concurrent finding of fact recorded by all the authorities below. In the present Writ Petition defendants have not made out any question of law and therefore, there is no question of entertaining the present Writ Petition for setting aside the concurrent finding of facts recorded by the authorities.

12. The learned counsel for the plaintiff submits that on the basis of 7/12 extract placed on record and agreement dated 20.7.1957 between defendants Kolhapur Sugar Factory, it is crystal clear that the defendants were not using the suit property for growing sugar cane crop. Therefore, the learned Tenancy Aval Kurkun Karvir in Tenancy Case No. 14 of 1989 considering the judgement of this court as well as notification issued under section 9 of the said Act calculated average yield payable by the defendant to plaintiff. He submits that at the time of calculating the net profit as required under section 2(13) of the said Act the learned Tenancy Aval Kurkun Karvir has taken into consideration the yield of the suit property and expenses required for the said yield. He submits that these facts were taken into account by the authorities below on the basis of documents on record. Therefore, there is no question of interfering with the well reasoned order passed

by the authorities below. Therefore, there is no substance in the present Writ Petition and same is required to be dismissed with costs.

13. I have heard both the sides at length. Admittedly, in the present proceedings, Civil Judge, Junior Division Kolhapur made a reference to the revenue authority that for deciding the issue, “what is the reasonable rent of the land”. The learned Tenancy Aval Kurkun Karvir in Tenancy Case No. 14 of 1989 considering the evidence on record i.e. 7/12 extract, agreement dated 20.7.1957 and the deposition of the parties held that the defendants were growing sugar cane crop in suit land. The learned Tenancy Aval Kurkun Karvir considered the yield of the suit land and the expenses required to take sugar cane crop, held that defendants have to pay sum of Rs.2,427/- rent per year to the plaintiff. As the judgment in Tenancy Case No.14 of 1989 is based on documentary evidence on record and to reverse that, defendants have not brought anything on record to show that actually he was using the land only for growing paddy crop, I do not find any reason to interfere with the well reasoned order in petition under Article 227 of the Constitution of India. In any case, there is a concurrent finding of fact recorded by the authorities below. Hence, Writ Petition stands rejected.

14. Considering the facts and circumstances of the present case, no order as to costs.

(K.K.TATED, J.)