

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

WRIT PETITION NO. 3655 OF 2000

Bhimashankar Raghunath Khurpe
age 55 yrs, occ. Agri.,
r/o Bajaj galli, Majalgaon
Dist. Beed.

... Petitioner

Versus

1. Ramkishan Bhanudas Jujgar
since deceased through his L.Rs.

1-A] Ashok Ramkishan Jujgar
Age: 40 years, Occu: Agri.
R/o. Jujgar Galli, Majalgaon,
Tq. Majalgaon, Dist. Beed.

1-B] Lata Ramkishan Jujgar
Age: 20 years, Occu: Household,
R/o. As above.

1-C] Prabhakar Ramkishan Jujgar
Age: 18 years, Occu: Agri.,
R/o. As above.

2. Ashok Ramkishan Jujgar
age 35 yrs occ. Agril
r/o as above.

3. Prabhakar Ramkishan Jujgar
age major occ. and r/o as above

... Respondents

....

Mr. V. V. Bhavthankar, Advocate for petitioner.
Mr. V. D. Salunke, Advocate for respondent Nos. 1-A and 1-C.
Respondent No.1-B served.

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CORAM : P. R. BORA, J.

DATED : 21st JUNE, 2019.

ORAL JUDGMENT :-

1. The petitioner has challenged judgment and order dated 11.04.2000 passed by the Maharashtra Revenue Tribunal in Case No.MRT/33/B/99/B, whereby it has confirmed the judgment and order dated 29.10.1996 passed by the Deputy Collector, Land Records, Beed in Appeal No.95/TNC/A/46 and the judgment and order dated 27.10.1994 passed by the Additional Tahsildar, Majalgaon in Case No.84/TNC/67.

2. The facts, which are relevant for the purpose of deciding this petition, can be briefly stated thus;

a] The petitioner had filed Regular Civil Suit No.112/1976 in the court of Civil Judge, Junior Division at Majalgaon for seeking permanent injunction. It was the case of the petitioner in the said civil suit that, his possession over the suit property was threatened by original defendant Nos. 1 and 2. In the said civil suit, issue of tenancy was also raised, and accordingly, a reference was made by the civil court for deciding the issue of tenancy to the Tahsildar, Majalgaon. The reference was made in the year 1984. The Tahsildar, Majalgaon then carried out the necessary inquiry in the matter and decided

the matter before him finally on 27.10.1994, thereby holding that the present petitioner, who was applicant in the said case was not tenant in the suit land.

b] Aggrieved by the decision rendered by the Tahsildar, the petitioner preferred an appeal before the learned Deputy Collector, Land Records, Beed. The learned Deputy Collector, Land Records, Beed, dismissed the appeal so filed by the petitioner vide judgment and order dated 28.10.1996. The petitioner carried both the aforesaid orders to the Maharashtra Revenue Tribunal, and the Tribunal vide its judgment and order dated 11.04.2000 dismissed the revision application filed before it and thereby confirmed the orders passed by the learned Tahsildar, Majalgaon and the learned Deputy Collector, Beed. Aggrieved by the same, the petitioner has filed the present writ petition.

3. Shri Bhavthankar, learned counsel appearing for the petitioner, submitted that all the three authorities i.e. the Tahsildar, the Deputy Collector and the Maharashtra Revenue Tribunal have manifestly erred in not appreciating the evidence, which was placed on record in the form of the registered-deed of agreement of sale executed by Murlidhar Bhimashankar Jujgar

in his favour on 23.04.1976. The learned counsel further submitted that in the said registered agreement of sale, it has been clearly averred that on the day of execution of the said deed in favour of the petitioner the subject land i.e. portion admeasuring 2 H 2½ R out of 4 H 5 R bearing Gat No.168 situated at village Kesapuri, Taluka Majalgaon, District Beed, which was agreed to be sold to the present petitioner, was in his possession since prior to about one year of the execution of the said agreement of sale as a tenant in the said land.

4. The learned counsel further submitted that the authorities below have also erred in not considering the revenue entry taken in that regard on the untenable ground that, that was a pencil entry and was never confirmed. The learned counsel submitted that since the agreement of sale was registered in the office of Sub-Registrar, the authorities below must have appreciated the averments in the said sale-deed revealing that the disputed land was in possession of the petitioner since prior to one year of the execution of the said document as a tenant in the said land. The learned counsel submitted that the copy of the said pencil entry as well as the copy of the said agreement of sale was placed on record and it was the sufficient evidence for the learned Tahsildar to arrive at

a conclusion that the present petitioner was the tenant in the subject property since prior to one year of the execution of agreement of sale dated 23.04.1976.

5. The learned counsel submitted that the defendants in the civil suit have claimed their possession over the suit property on the basis of the agreement of sale allegedly executed in their favour by Murlidhar Bhimashankar Jujgar. The learned counsel submitted that if the averments, as aforesaid, are considered conjointly with the documentary evidence placed on record by the petitioner-plaintiff in the form of registered agreement of sale executed by the said Murlidhar Bhimashankar in favour of the petitioner on 23.04.1976, there remains no doubt that when Murlidhar Bhimashankar is alleged to have executed an agreement of sale in favour of present respondent Nos. 1 and 2, the subject land was in possession of the petitioner plaintiff as a tenant in the said property. The learned counsel submitted that without terminating the tenancy of the petitioner-plaintiff by resorting the procedure laid down, the petitioner-plaintiff could not have been evicted from the said land, and as such, Murlidhar Bhimashankar was not having any authority to execute the agreement of sale in respect of the said land in favour of the present respondent Nos. 1 and 2.

6. The learned counsel submitted that the Tahsildar, Deputy Collector and the Maharashtra Revenue Tribunal, all have decided the issue of tenancy against the petitioner only on the ground that the petitioner could not bring on record the sufficient evidence to prove his possession over the subject land as a tenant in the said land on the day on which the original defendant No.3 i.e. Murlidhar has executed the agreement of sale in favour of the present respondents. The learned counsel submitted that having regard to the evidence which is available on record, it can be reasonably inferred that the petitioner-plaintiff was inducted as a tenant by Murlidhar Bhimashankar in the year 1974-1975 and he continued to be in occupation of the subject land thereafter.

7. The learned counsel submitted that all the three authorities have denied the opportunity to prove his case to the petitioner and adopting a technical approach, have dismissed the proceedings and have declined to hold the petitioner as tenant in the said suit property at the time when an agreement is alleged to be executed by Murlidhar Bhimashankar in favour of the present respondents. The learned counsel relying on the judgment of this Court in the case of Ramji Dhondji Dhumal and others Vs. Mahadu Jalbaji Dhumal and others reported in

2009(6) Mh.L.J. 461, urged that the matter be remitted to the Collector for deciding it afresh by giving opportunity to the petitioner to prove his tenancy pertaining to the subject land. The learned counsel on the said ground prayed for allowing his writ petition.

8. Shri V. D. Salunke, the learned counsel appearing for the respondents resisted the submissions made on behalf of the petitioner on various grounds. The learned counsel assailed the impugned judgment firstly on the ground of its maintainability. The learned counsel submitted that having regard to the averments in the plaint and the relief sought in the suit filed by the petitioner before the civil court, no reference was liable to be made to the Tahsildar as about the tenancy.

9. The learned counsel placed his reliance on the judgment of this Court in the case of Baliram Maruti Satvekar Vs. Dadu Govind Tipugade and others reported in 1986 BCI 111 and more particularly, invited my attention to paragraphs 5 and 6 of the said judgment and submitted that unless there is some strong prima-facie evidence showing that a person is holding the subject land in capacity of the tenant, the civil court cannot refer the matter to the tenancy court for deciding the tenancy issue,

and more particularly in the suits for simpliciter injunction, no such course is available to be adopted by the civil court.

10. The learned counsel further submitted that none of the authorities below can be said to have acted arbitrarily, having regard to the fact that the tenancy case which was referred to the Tahsildar in the year 1984, remained unattended and undecided for the long period of ten years and ultimately, the learned Tahsildar was constrained to decide the same on the basis of the documents available on record, since, despite giving opportunity to the petitioner, he had failed in bringing on record any evidence proving his tenancy over the subject land at the time when the agreement of sale was allegedly executed in favour of the present respondents.

11. The learned counsel submitted that in the judgments respectively delivered by these authorities, all of them have recorded a clear finding that the petitioner has failed in bringing on record any evidence to prove that he was the tenant in the subject property during the relevant period. The learned counsel submitted that this Court, under Section 227 of the Constitution of India, is not supposed to exercise the discretion vested in it, wherein the authorities below have not acted arbitrarily and

have recorded certain finding based on the facts brought before them. The learned counsel, in the circumstances, prayed for dismissal of the writ petition.

12. I have given due consideration to the submissions made by the learned counsel appearing for the parties. I have also gone through the impugned judgments and orders. Admittedly, all the three revenue courts have concurrently decided the matter against the petitioner. The Tahsildar, in conducting the inquiry, has not committed any procedural lapse. The observations made by the Tahsildar in his judgment reveal that ample opportunities were given by him to the petitioner to proceed with his case and to adduce necessary evidence in support of his plea of tenancy over the subject land. The record shows that the petitioner failed in producing sufficient evidence to substantiate his plea of tenancy over the subject land. In the circumstances, the learned Tahsildar recorded a finding that the applicant Bhimashankar Raghunath Khurpe is not the tenant in the suit land. Though the matter was carried by the petitioner further by filing tenancy appeal before the Collector, Land Records, Beed, the learned Deputy Collector dismissed the appeal observing that the appellant i.e. the petitioner in the present writ petition has failed in bringing on record the necessary evidence

in support of his claim of the tenancy in the suit land, despite adequate opportunities given to him by the Tahsildar.

13. The petitioner, thereafter, also availed the remedy of revision before the Maharashtra Revenue Tribunal, however, the Tribunal has also not granted any relief to the petitioner, vide order dated 11.04.2000 the Tribunal has also dismissed the revision filed by the petitioner. The Tribunal has concurred with the observations made and findings recorded by the Tahsildar and the learned Deputy Collector. In fact, in absence of any procedural lapse brought to the notice of this Court in conducting the matters by the revenue authorities, this Court is not supposed to cause any interference in the conclusions recorded by these authorities on facts under Article 227 of the Constitution of India.

14. It was sought to be contended by Shri Bhavthankar that the agreement of sale dated 23.04.1976 placed on record was the sufficient evidence produced by the petitioner to support his claim that he was the tenant in the suit property at the time when Murlidhar Bhimashankar Jujgar allegedly executed the agreement of sale in favour of the present respondents. The learned counsel pointed out that it was the registered agreement

of sale containing an averment therein that the subject land was in possession of the petitioner since prior to one year of the execution of the said agreement of sale as a tenant. According to learned counsel Shri Bhavthankar, no other proof was required to be brought on record.

15. It was also the contention of Shri Bhavthankar that the pencil entry made in the 7/12 extract, bringing on record the said fact of execution of agreement of sale in favour of the petitioner by Murlidhar Bhimashankar Jujgar was the corroborative evidence proving the contention of the petitioner that he was the tenant since prior to one year of execution of the agreement of sale in his favour by Murlidhar Bhimashankar Jujgar. I am, however, not convinced with the submissions so made by Shri Bhavthankar. As has been observed by the Tribunal in the impugned judgment, once a person raises the plea of tenancy, the burden lies on the said person to prove his tenancy beyond reasonable doubt. Filing on record the registered agreement of sale, though it was containing averment that the subject land was in possession of the petitioner since prior to one year of the execution of the said agreement, was not enough to prove the plea raised by the petitioner that he was tenant in the suit land.

16. By placing on record the registered agreement of sale the only fact which has been proved by the petitioner is to the effect that an agreement of sale was executed by Murlidhar Bhamashankar Jujgar in his favour on 23.04.1976. To prove the contents of the said agreement of sale and more particularly, the fact that the subject land was in his occupation as a tenant since prior to one year of the execution of the said agreement of sale, was on the petitioner and the petitioner has failed to discharge the said burden, though several opportunities were extended to him by the learned Tahsildar. As has been rightly observed by the Tribunal to establish the relationship between the original landlord and him, the petitioner was under an obligation to prove the contract of lease between him and the landlord and also must have produced the necessary minimum evidence to prove the said contract. The petitioner, admittedly did not produce any rent receipt or any other evidence in support of his claim. As noted hereinabove, the contents of the agreement of sale were also not proved by him. No further evidence was brought on record by the petitioner to show that the pencil entry was at any time confirmed thereafter. As observed by the learned Tribunal, mere entries in the revenue record were not sufficient to prove or establish the lawful tenancy of the petitioner.

17. The record shows that the Regular Civil Suit was filed by the petitioner in the year 1976. The tenancy issue was framed in the said suit and the matter was accordingly forwarded to the tenancy Court to decide the issue of tenancy in the year 1984. The observations made by the learned Tahsildar in the impugned order, to which my attention was specifically invited by Shri Salunke, the learned counsel appearing for the respondents demonstrate that ample opportunities were given by the learned Tahsildar to the petitioner to bring on record necessary evidence in support of his claim. I need not repeat the dates which are mentioned in the order, suffice it to say that ample opportunities were given by the Tahsildar to the petitioner to bring on record the evidence in support of his claim. It is the matter of record that though the matter was pending for long ten years, the petitioner failed to bring on record the necessary evidence. The learned Tahsildar, therefore, rejected the claim of the petitioner vide order dated 27.10.1994.

18. I do not see any procedural infirmity in the order passed by the Tahsildar, which has been confirmed by the learned Deputy Collector and lastly by the Maharashtra Revenue Tribunal. I do not see any infirmity in the orders passed by these authorities even on merits. A request is made by Shri

Bhavthankar, to give an opportunity to the petitioner to adduce necessary evidence in support of his claim and to remand the matter to the Tahsildar for the said purpose. I am, however, not inclined to accede to the request so made having regard to the fact that the suit was filed by the petitioner in the year 1976, the reference to decide the tenancy was made by the Civil Court in the year 1984 and it was rejected by the Tahsildar in the year 1994 and thereafter, the matter was carried further to the appellate revenue authorities and the present writ petition has been thereafter filed in the year 2000 i.e. after lapse of about 43 years. I do not see any propriety in accepting the request of the petitioner that he should be given an opportunity to produce the necessary evidence on record to prove his tenancy.

19. After having considered the entire material on record, I do not see any merit in the petition so filed, hence, the following order :

O R D E R

The writ petition is dismissed, however, without any order as to costs. Rule is discharged.

[P. R. BORA, J.]