IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. : 1969 OF 2000

Shri. Tukaram S/o Shankar Gondkar,
Age – Major, Occu : Agriculturists,
R/o Shirdi, Tal. Rahata,
District Ahmednagar. **... PETITIONER**
(Orig. Applicant)

- <u>VERSUS</u> -

1) Dnyaneshwar S/o Sopanrao
Shelke, Age – Major.

2) Bhaskar s/o Govind Gondkar,
Age – Major.

3) Babasaheb S/o Govind Gondkar,
Age – Major.

4) Lahanubai Sakharam Kolse.
Age – Major.

All occu. Agri. R/o Shirdi.
Tal. Rahata, District Ahmednagar.

5) Smt. Shevantabai Tukaram
Kshirsagar, Age -Major,
Occ. Agri. R/o Ekrukha,
Tal. Rahata, Dist. A'nagar.

6) Smt. Jayawantabai Gangadhar
Kharde, Age – Major, Occ. Agri.
R/o Kolhar Bdk. Tal. Shrirampur,
District Ahmednagar.

7) Gangubai Raibhan Tambe,
Age – Major, Occu. Agri.
R/o Muthe – Vadgaon,

Tal. Shrirampur, Dist. Ahmednagar.

... RESPONDENTS
(Orig. Opponents)

...

Advocate for the Petitioner :- Shri A. K. Gawali
Advocate for Respondent No.1 : Shri C. V. Korhalkar

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 04th APRIL, 2019.

...

ORAL JUDGMENT :

1. By this petition, the petitioner has put forth prayer clause 10B as under :-

> "*B) The Judgment and order dated 19th March, 1999 passed by the learned Member of the M.R.T. Pune in Revision No. MRT-SH-IV-2/95 be quashed and set aside and the judgment and order dated 7.1.1995 passed by the learned Sub-Divisional Officer, Sangamner Division, Sangamner, be restored.*"

2. By the order dated 24/10/2001, this Court heard the learned Advocates, the petition was admitted and interim relief in terms of prayer clause 'C' was granted. The said order reads as under :-

> "*Heard learned advocates for the parties.*

Rule.

Interim relief in terms of prayer clause (C)".

3. The petitioner had prayed in Clause (C) for staying the judgment of the Maharashtra Revenue Tribunal, Pune dated 19/03/1999 delivered in Revision No. MRT-SH-IV-2/95, by which, the judgment of the Sub Divisional Officer, Sangamner was quashed and set aside.

4. I have heard the learned Advocates for the respective sides, have gone through the petition paper book and the record and proceedings, with their assistance.

5. The petitioner Tukaram is the original plaintiff in Regular Civil Suit No. 80/1990. He claims to have purchased the land admeasuring 40 R. out of Survey No. 167 vide sale deed dated 29/04/1981. Since an issue of Tenancy arose on the basis of the claim put forth by the defendants, that the Trial Court framed the following issue and referred the same to the Agricultural Lands Tribunal, the Tahsildar, Kopargaon :-

> "*Does defendant No. 1 prove that he is a tenant of the suit land prior to the alleged conditional sale-*

deed dated 27/06/1976 ? (erroneously typed as 20/06/1976).

6. The petitioner, by preferring the suit for redemption of mortgage of 40 R. land from Sy.No. 167/5/A, contended that respondent No.1 had entered into a mortgage deed dated 30/07/1979 with the petitioner for a period of 5 years. The said period was over on 30/07/1984 and the mortgage was to be redeemed by respondent No.1 in favour of the petitioner. Since he failed to do so, the petitioner was constrained to prefer the said suit.

7. The tenancy issue was dealt with by the ALT which recorded evidence of the parties and delivered a judgment on 30/09/1993 in the Tenancy Case No. 9/1990. It was concluded that defendant No.1 was a tenant.

8. Since the petitioner plaintiff was aggrieved by the said decision, he preferred Tenancy Appeal No. 13/1993 before the Sub Divisional Officer, Sangamner contending that the suit land earlier belonged to respondent Nos. 2 and 3 and the petitioner had purchased the said land which is the entire suit

property on 29/04/1984. It was contended that the Trial Court had lost sight of the evidence led by the plaintiff indicating a clause in the mortgage deed dated 30/07/1979, which was "the possession of the land is given today". It was further contended that respondent No.1 was obliged redeeming the mortgage and the plaintiff was, therefore, to take possession of the land. It was averred that defendant No. 1 was not in possession of the suit land prior to 27/06/1976.

9. The SDO delivered its judgment on 07/01/1995 by drawing the following conclusions :-

> *The issue referred by the Civil Court is "Whether the Def. No. 1 Dnyaneshwar Shelke (present respondent No.1) proves that he is tenant of suit land prior to the alleged conditional sale-deed dt. 27/6/76. Now the burden of proving his case lies on the respondent No.1. The respondent No.1 produced the certified copy of the document of agreement of conditional sale-deed dated 27/6/76. But the has not proved this document by examining the signatories of the document i.e. land owners or withness. The contents*

of this document clearly show that this document is a agreement for conditional sale-deed. The document was executed by only one co-sharer of the land namely, Bhaskar only. The record shows that there are in all 6 cosharers (heirs) in this land. This document also shows that the suit land was not entered at the time in the name of Shri Bhaskar Govind, who executed the document but he stated that the land would come to his share as heir. This clearly shows that Bhaskar Govind, who executed the document was not alone and exclusive owner of the suit land. So he alone was not authorised or entitled to executed that document dt- 27/6/76. Moreover this document is not a lease deed but it is an agreement for executing a conditional sale-deed. In the last para of this document, it has been stated that the land has been given for cultivation on oral agreement on payment of crop share. There is no mention of givenin actual possession of the suit land, in this document. It is not proved that the so called oral agreement of giving land for cultivation was *actually given effect.*

But the entries in V. F. No. VII.XII shows that the suit land was cultivated by Thakubai Govind from the year 1974-75 to 1977-78 and not by respondent No.1. The respondent No.1 has not produced any receipts for the payment of crop share to the land lord. Thus the respondent No. 1 could not produce any reliable and relevant documentary evidence to supports his stand, about the creation of tenancy. There are no entries in V. F. No. 7/12 in his favour. There are made as per actual wahiwat and not considering the good or bad relations with lands lords. No receipt of payment of crop-share have been procuded, The lease deed is also not on record. The respondent Nos. 1 also failed to prove the oral agreement of creation of tenancy in his favour. Moreover, the respondent No.2 Bhaskar Govind was not alone authorised to create the tenancy if at all created. I am thus satisfied that the respondent No. 1 totally failed to prove the creation of tenancy of tenancy in his favour in 1976, and also *his possession on the land from the year 1976. The Subsequent document dated 30/7/79 of conditional sale-deed executed in between the respondent No.1 and respondent No. 2 and 3 & Thakabai clearly shows that the suit land was mortgaged and also simulteneously sold conditionally. It has been specifically mentioned in this document that suit land has been given in actual possession today. i.e. on the date of execution of document dated 30/7/79. There is no mention about the previous continuous possession of the respondent No.1 since the year 1976, as alleged. Had there been the actual creation of tenancy with possession since 1976, mention about it would have been made in the document. This clearly shows that the respondent No.1 come firest in possession on the suit land defintely on 30/7/79 on the strength of the document dt. 30/7/79 and not before that date. I am convinced that the order passed by the lower court is totally illegal, improper and not based on the evidence on record. The appeal will have to be allowed and the* *order of the lower wourt will have to be set aside in the interest of justice.*"

It was, therefore, concluded that the ALT had committed an error in passing the order dated 30/09/1993 and defendant No. 1 had failed to prove that he is a tenant.

10. Defendant No.1 then approached the Maharashtra Revenue Tribunal, Pune. By the impugned judgment dated 19/03/1999, the MRT concluded that the agreement of lease deed dated 27/06/1976 clearly indicates that the land is handed over to the first defendant for cultivation and he had agreed to pay half share of the produce to the landlord. Admittedly, the document dated 27/06/1976 is not a registered document and cannot be read in evidence, but it can be used for collateral purposes. Upon going through the evidence on record, the MRT concluded that taking into account the lease deed dated 27/06/1976, the conditional sale dated 30/07/1979 and the mutation entry No. 6186, would clearly show that the land was cultivated by defendant No. 1 from 27/06/1976 by way of a lease. Considering the oral

evidence along with the documents placed on record, the first defendant was the lawful tenant on 27/06/1976. The revision application was allowed and the order of the SDO was set aside.

11. The learned Advocate for the petitioner points out that ***Section 17 of the Maharashtra Registration Act, 2015*** mandates such a document to be compulsorily registered if any of the contingencies set out therein are a part of such a document. Section 17 of the said Act reads as under :-

> *17.* ***Documents of which registration is compulsory,*** *–(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (XX of 1866), or the Indian Registration Act, 1871 (VII of 1871), or the Indian Registration Act, 1877 (III of 1877), or this Act came or comes into force namely :*
>
> *(a) Instruments of gift of immoveable property ;*
>
> *(b) other non-testamentary instruments which purport or operate to create, declare assign, limit or extinguish, whether in present or in future, any*

right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property ;

(c) non-testamentary instruments, which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent ; and

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property :

Provided that the State Government may, by order published in the official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1-A) The documents containing contracts to transfer for consideration, any movable property for the purpose of Sec. 53-A of the Transfer of Property

Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said Sec. 53-A.

(2) Nothing in Cls. (b) and (c) of sub-section (1) applies to –

(i) any composition deed ; or

(ii) any instrument relating to share in a Joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immoveable property ; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immoveable property except in so far as it entitles the holder to the security afforded by a Registered Instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures : or

(iv) any endorsement upon or transfer of any debenture issued by any such company : or

(v) any document other than the documents specified in sub-section (1-A) not itself creating, declaring, assigning, limiting or extinguishing any

right, title or interest of the value of the hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest ; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject – matter of the suit or proceeding; or

(vii) any grant of immoveable property by the Government; or

(viii) any instrument of partition made by a Revenue Officer ; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (XXVI of 1871), or the Land Improvement Loans Act, 1883 (XIX) of 1883) ; or

(x) any order granting a loan under the Agriculturists Loans Act, 1884 (XII of 1884); or instrument for securing the repayment of a loan made under this Act ; or

(x-a) any order made under the Charitable Endowments Act, 1890 (VI of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property ; or)

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for repayment of money due under a mortgage when the receipt dos not purport to extinguish the mortgage ; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

[Explanation – A document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

3) Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a Will, shall also be registered."

12. It is further submitted that the document at issue was, therefore, necessarily required to be registered. Since it was an unregistered document, it was struck by Section 49 of the Registration Act vide which no document required to be registered under Section 17, would have any evidentiary value.

13. I have gone through the mortgage deed dated 30/07/1979. It does not indicate the contingency of share of the crops/proceeds. As such, though ***Section 4(1)(b) of the Maharashtra Tenancy and Agricultural Lands Act*** may not rescue the petitioner, the fact remains that the agreement dated 27/06/1976 was not acted upon and the said document appears to be an agreement to mortgage by conditional sale. The non registration of the agreement would be fatal to defendant No.1.

14. Notwithstanding the above, the record reveals that the lease deed was not placed on record and no receipt of payment of crop share was produced.

15. The document dated 30/07/1979 clearly appears to be a mortgage by conditional sale in which the consideration of Rs. 7,000/- is mentioned and the period is of 5 years. If the mortgagor is unable to repay the amount of Rs. 7,000/- within the period of 5 years, the mortgagor would lose the claim over the land and the said mortgage deed would then be converted into an absolute sale. It is also mentioned that the mortgagee

would utilize the land exclusively for the first 4 years and it was in the next year i.e. the 5th year when the mortgagor would repay the amount of Rs. 7,000/- after the mortgagee has harvested the crops and both the sides would bear the revenue expenses in equal proportions for the redemption of the land.

16. In this backdrop, the contention of the petitioner plaintiff that the explanation carved out under Section 4(1)(c) excluding persons from being deemed to be tenants, is sustainable as a mortgagee in possession is excluded from the deemed fiction of a tenant.

17. Notwithstanding the above, even if it is presumed for the sake of presumption that the original mortgagee was infact a tenant, such presumption would be unsustainable considering the effect of Section 32O and Section 32P of the Maharashtra Tenancy and Agricultural Lands Act. As such, a tenant who has not exercised a right to purchase the land within one year from the date of such tenancy, would lose his tenancy rights.

18. Considering the above, I find that the view taken by the

MRT is unsustainable. Hence, this petition is allowed. The impugned judgment and order dated 19/03/1999 stands quashed and set aside and the Revision Application stands rejected. Consequentially, the judgment of the SDO dated 07/01/1995 stands sustained.

19. Rule is made absolute accordingly.

20. The record and proceedings received from the MRT Pune, SDO, Sangamner and Tahsildar, Kopargaon, be returned forthwith.

21. The learned Advocates for the respective sides submit that as RCS No. 80/1990 (old No. 340/1982) is pending for the last 37 years, the same be expedited. As such, the Trial Court is directed to decide the said suit as expeditiously as possible and in any case, on or before 31/12/2019.

(RAVINDRA V. GHUGE, J.)

shp/-