

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

LETTERS PATENT APPEAL NO. 105 OF 2015

IN

WRIT PETITION NO. 8205 OF 2010

1. Navnath S/o. Chandu Kamble
Age 28 yrs. Occu: Agri.
R/o. Kinithot, Tq. Ausa, Dist. Latur.
2. Adinath S/o. Chandu Kamble
Age 20 yrs. Occu: Labour
R/o. Kinithot, Tq. Ausa, Dist. Latur.

... APPELLANTS
(Orig. Respondents)

VERSUS

1. Gopal @ Gopinath Mahadu Kamble
Age 45 yrs. Occu: Agri.
R/o. Kinithot, Tq. Ausa, Dist. Latur.
2. Ashok S/o. Mahadu Kamble
Age 45 yrs. Occu: Agri.
R/o. Kinithot, Tq. Ausa, Dist. Latur
3. Prabhu S/o. Mahadu Kamble
Age 44 yrs. Occu: Agri.
R/o. Kinithot, Tq. Ausa, Dist. Latur

... RESPONDENTS
(Org. Petitioners)

WITH

LETTERS PATENT APPEAL NO. 200 OF 2012

IN

WRIT PETITION NO. 5243 OF 2011

1. Navnath S/o. Chandu Kamble

Age 28 yrs. Occu: Agri.
R/o. Kinithot, Tq. Ausa, Dist. Latur.

2. Adinath S/o. Chandu Kamble
Age 20 yrs. Occu: Labour
R/o. Kinithot, Tq. Ausa, Dist. Latur.

... **APPELLANTS**
(Orig. Petitioners)

VERSUS

1. Gopal @ Gopinath Mahadu Kamble
Age 45 yrs. Occu: Agri.
R/o. Kinithot, Tq. Ausa, Dist. Latur.
2. Ashok S/o. Mahadu Kamble
Age 45 yrs. Occu: Agri.
R/o. Kinithot, Tq. Ausa, Dist. Latur
3. Prabhu S/o. Mahadu Kamble
Age 44 yrs. Occu: Agri.
R/o. Kinithot, Tq. Ausa, Dist. Latur

... **RESPONDENTS**
(Org. Respondents)

...

Mr. M. P. Kale and Mr. G. V. Sukale, Advocate for Appellants.

Mr. A. S. Barlota, Advocate for Respondents.

...

CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATE : 22nd February, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. Letters Patent Appeal No.105 of 2015 is filed to challenge

the decision given by the learned Single Judge of this Court in Writ Petition No.8205 of 2010. The petition was filed to challenge the decision of the Maharashtra Revenue Tribunal, Aurangabad in proceeding filed under Section 98 of the Hyderabad Tenancy and Agriculture Lands Act, 1950. The proceeding was allowed by the Deputy Collector and this decision is confirmed by the Maharashtra Revenue Tribunal. The other appeal is filed against the same decision, but the proceeding is filed as two writ petitions were filed to challenge the decision of Maharashtra Revenue Tribunal and both the sides had challenged the said decision.

2 The submissions made and record show that the application for summary eviction was moved before the competent authority under the provisions of the aforesaid Tenancy Act. The said proceeding was allowed by the authority, but the Maharashtra Revenue Tribunal has set aside that order and the proceeding filed for eviction is dismissed. The reason given by the Revenue Tribunal is of limitation as the proceeding was filed after more than 12 years of losing the possession. The learned Single Judge of this Court has considered the matter on merits. In view of the provisions of Chapter

XVII Rule 18 of the Appellate Side Rules, the matter was considered by the learned Single Judge. It is a Tribunal created to take decisions under the Tenancy Act and the findings have the force of judicial decision. Thus, the jurisdiction was exercised under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India. Thus, the point of tenability of letters patent appeal is involved. On that point the case of the Apex Court reported as **(2015) 9 Supreme Court Cases 1**, (*Jogendrasinhji Vijaysinhji Vs. State of Gujarat and others*) can be referred and the relevant observation are as follows:

“18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in *Radhey Shyam*, which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable.

.....

30. From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent

appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in *Radhey Shyam* that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinise whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief

prayed on that foundation. Be it stated, one of the conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do not intend to comment on the same as that would depend upon the rules framed by the High Court.”

3 In view of the aforesaid position of law this Court holds that both the appeals are not tenable. In the result, both the appeals are dismissed. Pending civil applications also stand disposed of.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

ndm