

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

WRIT PETITION NO.5171 OF 2014

Vasantrya S/o Vishwanathrao Kulkarni
died through LRs
Suresh S/o Vasantrya Kulkarni and others ...PETITIONERS

VERSUS

Shivaji S/o Balbhim Mhaske
died through LRs
Vatsalabai w/o shivaji Mhaske and others ...RESPONDENTS

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Mr. S.Y. Mahajan Advocate for petitioners
Mr. M.U. Shelke Advocate for respondent Nos.2 and 3.

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CORAM: T.V. NALAWADE J.

DATED : 15th February, 2019.

ORAL ORDER

1 This Petition is filed by the original plaintiff in R.C.S. No.26/2008 presently pending in the Court of Joint Civil Judge, Junior Division, Washi. At Exh.58, present respondent nos. 2 and 3 had filed application for treating them as party defendants. The said application is allowed by the Trial Court. The said order is challenged in the instant petition.

2 Heard both the sides.

3. This Court has carefully gone through the copy of the plaint. In para No.3 of the plaint, the applicant-defendant has admitted that the opponent was in possession of the property till 1980. Record is produced to show that one Shantaram was a tenant and in the plaint also it is sated that one Santaram Mukinda and his grand sons were in possession of the suit property on behalf of plaintiffs as tenants till 1980. There is record - extract of tenancy register showing that Santaram Mukinda was tenant on tillers day. There is record of 7/12 extract showing that Santaram was in possession of the property from that day continuously. There is record showing that name of one Shivaji was then shown in cultivation column along with name of Santaram. Said Santaram vide a will, bequeathed his tenancy rights in respect of property of petitioner in favour of respondent Nos.2 and 3. Even if this will is ignored, the fact remains that the present respondents can claim right of tenancy as successors of Santaram.

4 Learned counsel for the petitioner submits that before Tahsildar, proceeding was filed against Shivaji in which some orders were passed in favour of the plaintiff. Name of Shivaji was shown in revenue record after 1980 as per the case of the plaintiff. There is record to show that the proceeding was filed by the present plaintiff against Santaram under the Tenancy Act but the said proceeding was dismissed.

5 Due to all these circumstances, this Court holds that the trial
Court has not committed any error in allowing the application Exhibit
58 in RCS 26/08, allowing the respondents to be added as
defendants No.2 and 3 as apparently, the plaintiff is trying to get
decree against the successors of Santaram and such decree will
create complications and will affect the rights and interest of
successor of Santaram.

6 Writ petition is dismissed.

(T.V. NALAWADE)
JUDGE

vbd