

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

WRIT PETITION NO.1131 OF 2018

Ramesh Yashwant Shinde and ors. : Petitioners.
Versus
Raghu Ranoji Aadnaik and ors. : Respondents.

Mr. S G Karandikar h/f. Mr. S S Koregave for the Petitioners.
Mr. Bhushan Walimbe for Respondent Nos.1 to 5.

CORAM : S. S. SHINDE, J
DATE : 11th April 2019

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 19/08/2017 passed by the learned Member, Maharashtra Revenue Tribunal Bench at Pune (for short "MRT) by which order the revision application filed by the Petitioners herein came to be rejected. By the said order dated 19/08/2019 the MRT has maintained the order dated 30/05/2016 passed by the Sub Divisional Officer, Karveer Sub Division Kolhapur (SDO) in Tenancy Appeal No.17/2015 by which order the SDO has rejected the Appeal filed by the Petitioners against the order of Tahsildar Karveer in Tenancy/70B/40/2014 dated 03/11/2015. The Tahsildar by the said order dated 03/11/2015 has rejected the application filed by the Petitioners for deleting the names of Respondents as tenants stating that the entry is Pokal.

2 The Petitioners claimed to be the original land owners of the suit

land and had obtained exemption certificate under section 88C of the Tenancy Act on 18/02/1960. It is not in dispute that the predecessor of the Petitioners had sold the suit land by a registered sale deed dated 25/03/1960 to the Respondents' predecessors viz. Ganpat Ravji Adnaik, Bhagoji Krushna Adnaik, Dnyanu Hanma Patil, Raghu Ranaba Adnaik and Dhondi Daulu Patil and handed over the possession of the suit land to them on the same day. It is required to be noted that the Petitioners neither disputed the said sale deed nor challenged the said sale deed before any competent forum. On the basis of the said sale deed, the Respondents claim to be the owners of the suit land and their names would have been recorded as the owners in the revenue record by deleting the names of the Petitioners. However, the said correction was remained to be done in the revenue record, and therefore, the names of the Petitioners continued as owners and the names of the Respondents as tenants. It is also not in dispute that in the year 1974 the consolidated scheme has been implemented in village Kuditre. The Petitioners have stated that after implementation of the consolidation scheme in the year 1974, the land has been exempted under Section 24(1) of Mumbai Fragmentation Consolidation Act. It is pertinent to note at this stage that though the Petitioners obtained such certificate, the predecessors of the Petitioners had already sold the suit land to the predecessors of the Respondents in the year 1960 and, as stated herein above, the Petitioners neither challenged nor disputed the said sale deed. As rightly observed by the SDO that this fact was required to be brought

into the notice of the officers at the time of consolidation scheme by Petitioners. But taking undue advantage of their names being continued as owners in the consolidation proceedings, that the Petitioners made an application to the Tahsildar in the year 2014 to delete the names of the Respondents as tenants stating the said entry is “Pokal”.

3 It is the contention of the learned counsel for the Petitioners that after the said sale deed, it is the responsibility of the Respondents to take appropriate steps to delete the names of the Petitioners as owners of the suit land from the revenue record. He also contended that in view of fact the Petitioners have obtained certificate under Section 88C of the Tenancy Act, the names of the Respondents as tenants are required to be deleted under Section 70B of the Tenancy Act.

4 In my view, it is not possible to accept the contentions urged on behalf of the Petitioners, firstly that the Petitioners did not dispute the sale deed dated 25/03/1960. Apart from that the Petitioners have never challenged the sale deed dated 25/03/1960 thereby confirming the ownership of the Respondents. It is after implementation of consolidation scheme, by taking undue advantage of their names being continued as owners, that the Petitioners filed an application before the Tahsildar in the year 2014 for deleting the names of the Respondents as tenants. Considering the fact that

the suit land had sold by the predecessors of the Petitioners to the predecessors of the Respondents by a registered sale deed and possession has already been handed over to the predecessors of the Respondents on the same day, and also considering the fact that the Petitioners ought to have brought to the notice of the said fact at the time of consolidation scheme, the Tahsildar has rightly rejected the said application of the Petitioners by order dated 03/11/2015. The SDO, while dismissing the Appeal filed by the Petitioners against order of the Tahsildar, has recorded a finding that though the Petitioners have obtained a transfer certificate in the consolidation scheme, the Petitioners cannot get back the rights which have already been transferred by the predecessors of the Petitioners in favour of the predecessor of the Respondents by the said sale deed. The said order of the SDO has been confirmed by the MRT in the Revision Application filed by the Petitioners. The MRT did not deem it appropriate to entertain the orders passed by the Tahsildar and the SDO. The MRT accordingly rejected the said Revision.

5 It is an undisputed fact that in the year 1960 the suit land has been sold by predecessors of the Petitioners to the predecessors of the Respondents and the possession of the land has been handed over to the predecessors of the Respondents on the same day. As indicated herein above, the Petitioners did not challenge the said sale deed, meaning thereby that the Petitioners confirm the ownership of the Respondents in respect of the suit

land. It is in after implementation of consolidation scheme, taking undue advantage of their names being continued in revenue record as owners, that the Petitioners filed the application in the year 2014 before the Tahsildar for deleting the names of the Respondents as tenants stating that the said entry is Pokal. In my view, there is no merit in the case of the Petitioners. The authorities below have recorded the concurrent findings in favour of the Respondents and against the Petitioners. Considering materials on record and also considering the findings recorded by the authorities below, I do not find any reason to interfere with the orders passed by the authorities below. There is no merit in the Writ Petition. The Writ Petition stands rejected.

[S. S. SHINDE , J]