

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

WRIT PETITION NO. 169 OF 2019

Commander D. S. Deshmukh (Retd.)
& Anr.

... Petitioners.

V/s.

Babasaheb B.Sonawane (dead)
through LRS. & Ors.

... Respondents.

**WITH
SECOND APPEAL NO. 989 OF 2012
WITH
CA_s NOS. 1976/2012 & 259/2016 IN SA-989/2012**

Babasaheb B.Sonawane (dead)
through LRS. 1A- Smt. A.B.Sonawane
(dead) through Lrs -1B

... Appellants.

V/s.

Smt. Putalabai S. Nigade-Deshmukh
& Ors.

... Respondents.

Mr. A. V. Anturkar, Senior Advocate a/w. Mr. S. B. Deshmukh, Nikhil Deshpande and S. Phatak, Advocates for the Petitioners in WP and for Respondents in Second Appeal.

Mr.P.B. Shah, Advocate i/by K. P. Shah for Respondent Nos. 1 to 8 in WP.

CORAM : UJJAL BHUYAN, J.

DATE : NOVEMBER 18, 2019.

PC :

1 This order will dispose of both - Second Appeal No. 989 of 2012 and Writ Petition No. 169 of 2019.

2 Heard Mr. Anil Anturkar, learned senior counsel instructed by Mr. S.B. Deshmukh, learned counsel for the Petitioners in the Writ Petition and for the Respondents in the Second Appeal; Mr. P. B. Shah, learned counsel for the Respondents in the Writ Petition and for the Appellants in the Second Appeal.

3 Both matters were heard together on 04.11.2019 and fixed today for delivery of order. Accordingly, order is dictated in the open court.

4 Since the Second Appeal has been preferred earlier in point of time it would be apposite to refer to the same at the outset.

4.1 The Second Appeal has been preferred by the legal heirs of Babasaheb Balasaheb Sonawane against the judgment and order dated 30th June, 2012 in Regular Civil Appeal No. 284 of 2004.

5 Respondents in the Second Appeal, as the Plaintiffs had instituted Regular Civil Suit No. 34 of 1984. Suit land in question is part of CTS No. 1297 of village Shirwal, Taluka Khandala, District – Satara. The predecessor-in-interest of the Plaintiffs had filed an application for issuing certificate under section 88C of the Bombay Tenancy and Agricultural Lands Act, 1948, vide Tenancy Case No. 487 of 1958, contending that he was the tenant over the suit land. The said application was decided on 31.07.1962 with the finding that the suit land was grassy land and, therefore, provisions of the Bombay Tenancy Act were not applicable. Even in the Tenancy Case filed by the landlord a separate finding was recorded on 31.07.1962 that the suit land was a grassy land and not cultivable land. Against such decision, Tenancy Appeal was preferred wherein said finding that the suit land was grassy land was upheld. Revision filed against the decision in Tenancy Appeal, was also dismissed on 23.01.1975. This finding of the Revisional Authority dated 23.01.1975 was not challenged further by the Appellants and it has attained finality.

6 Plaintiffs issued notice some time in the month of September, 1982, to be precise on

21.09.1982 under section 106 of the Transfer of Property Act, 1882, calling upon the Tenants/ Defendants to vacate the suit land in view of the finding recorded in tenancy proceedings.

7 Plaintiffs contended that the tenancy of the Defendants was thereafter validly terminated. Despite termination of tenancy, Defendants remained in unauthorized possession over the suit land.

7.1 Plaintiffs then instituted the related suit, seeking declaration of right, title interest and recovery of possession over the suit land. It was registered as Regular Civil Suit No. 34 of 1984.

8 The suit was contested by the Defendants by filing written statement.

9 On the basis of the pleadings, following issues were framed by the Trial Court.

“1. Whether plaintiffs are owner of the suit properties ?.

2. Whether the tenancy of the defendants is terminated by a valid notice dated 21.09.1982?.

3. Whether description of suit properties are correct ?.
4. Whether suit is barred by Law of Limitation ?.
5. Whether the suit is bad for non-joinder of necessary parties ?.
6. Whether the suit is maintainable under the provisions of Transfer of Property Act ?.
7. Whether plaintiffs are entitled for mesne profit ?.
8. What order and decree ?."

10 After hearing the matter, Regular Civil Suit No. 34 of 1984 was decreed on 16.08.2003, holding that Plaintiffs had proved that they were owners of the suit land and that the tenancy of the Defendants was terminated vide notice dated 21.09.1982.

11 Against the aforesaid judgment and decree of the Trial Court, the Defendants, as Appellants, preferred appeal before the lower Appellate Court i.e. the District Court, Satara. Appeal was registered as Civil Appeal No.

284 of 2004 and was assigned to Ad-hoc District Judge-II at Satara. By the judgment and order dated 30.06.2012, the appeal of the Defendants was dismissed, by confirming the order of the Trial Court.

12 Aggrieved thereby, the Second Appeal has been preferred.

13 At the time of hearing the Second Appeal on 23.08.2016, a submission was made before the Court that Revision Application filed by the Appellants against the order of the Appellate Authority regarding status of the suit land was still pending before the Revisional Authority. On such submission, this court directed Maharashtra Revenue Tribunal i.e. the Revisional Authority to dispose of the revision proceedings expeditiously. Relevant portion of the said order dated 23.08.2016 is extracted as under :

“1. Learned counsel for the parties submit that the revision application filed by the appellants herein before the Maharashtra Revenue Tribunal (Application No. NS/VIII/1/93) is still pending for hearing and final disposal. The said revision application is filed against the order dated 2nd August, 1993 passed by the Sub-Divisional Officer

under the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948. Learned counsel further state that the next date before the Maharashtra Revenue Tribunal is 9th September, 2016.

2. The Maharashtra Revenue Tribunal shall make an endeavor to dispose of the said proceedings not later than three months from the date of communication of this order. The parties are directed to convey this order to the Maharashtra Revenue Tribunal for compliance.

3. Further arguments in this second appeal can be advanced after disposal of the appeal before the Maharashtra Revenue Tribunal.

4. Place this second appeal on board for directions on 19th December, 2016. Ad-interim order granted by this Court to continue until further orders.”

14. Thereafter, Maharashtra Revenue Tribunal, Bench at Pune (Tribunal) passed order dated 26.07.2017 in the Revision Application filed by the Appellants; against which the related writ petition

being Writ Petition No. 169 of 2019 has been preferred by the Respondents in the Second Appeal.

15 Shorn of details what is noticeable is that predecessor-in-interest of the Respondents in the Writ Petition claimed to be a tenant in respect of the suit property. In this connection, he had filed an application under section 32-G of the Bombay Tenancy and Agricultural Lands Act. By order dated 26.03.1991 the Additional Tahasildar & Agricultural Lands Tribunal decided the said application in favour of some of the predecessors-in-interest by holding them to be the tenants. Against the said order dated 26.03.1991, Petitioners preferred appeal being Appeal No. 12 of 1992. It may be mentioned that several appeals were filed including the landlords. Sub-Divisional Officer, acting as the Appellate Authority, allowed the appeal of the Petitioners vide order dated 30.04.1993.

16 Against the said order passed in appeal, Respondents preferred Revision Application before the Tribunal. By the impugned order dated 26.07.2017, Revision Application was allowed and the order passed by the Appellate Authority was set aside. The matter was remanded back to the Agricultural Lands Tribunal to

decide the matter afresh expeditiously after hearing the parties.

17 Aggrieved by the said order, present writ petition has been filed. It is seen that on the request of the parties, Second Appeal and Writ Petition were clubbed together and that is how both the matters came to be heard together.

18 Learned counsel for the parties have advanced their respective submissions and pursuant to leave granted by this court on 04.11.2019, Mr. Shah, learned counsel for the Respondent Nos. 1 to 8 filed written submission with copy of the same to learned counsel for the Petitioners, which has also been perused.

19 Submissions made have been considered.

20 Short point of controversy in the Second Appeal as well as in the Writ Petition is as to whether the suit land or the land in question is a grassy land or agricultural land.

21 In the suit, the Trial Court had accepted the findings of the tenancy authorities, holding that finding

of the Tahasildar vide order dated 03.07.1962 that the land in question was grassy land and that being so, provisions of the Bombay Tenancy and Agricultural Lands Act would not be applicable to the present case.

22 Proceeding further, Trial Court held that when provisions of the Bombay Tenancy & Agricultural Lands Act was not applicable to the suit land, provisions of the Transfer of Property Act would be attracted and, thereafter, the findings were recorded that the Plaintiffs were owners of the suit land and the tenancy of the Defendants i.e. Appellants in the Second Appeal No. 989 of 2012 and Respondents in the Writ Petition was terminated vide notice dated 21.09.1982. This factum was also accepted by the lower Appellate Court. The lower Appellate Court accepted the finding of fact that the suit land was grassy land which was apparent from the evidence on record. It was further held that none of the Defendants or any body on their behalf cultivated the suit land. On the other hand, evidence revealed that grass was growing naturally on the suit land. In such circumstances, the lower Appellate Court held that when grass grows naturally on the land, which is taken on lease for cutting of grass, provisions of the Tenancy Act would not apply to it.

23 This position was also accepted by the Appellate Authority in the tenancy proceeding. Even in the Revision proceedings instituted by the Appellants in the Second Appeal, the Revisional Authority i.e. the Tribunal acknowledged that the revenue record itself indicates that said part of the land was uncultivable where the grass was growing naturally. However, while accepting the above position, Tribunal surprisingly observed that whether the suit land comes within the ambit of the Tenancy Act or not, was the crucial issue, which was required to be examined by the Appellate Court as well as by the Tahasildar. Accordingly, the matter was remanded back to the Agricultural Lands Tribunal to decide this aspect of the matter.

24 Section 2(1) of the Tenancy Act defines the expression "Agriculture". Agriculture has been defined to include horticulture, raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle, the use of any land, whether or not an appendage to rice or paddy land, for the purpose of rab manure, but does not include allied pursuits or the cutting of wood only.

25 This court has held that where grass grows naturally, the same would not come within the purview of the definition of agriculture. Thus, land on which grass grows naturally, cannot be construed as agricultural land and therefore, by extension such land would be beyond the scope and ambit of the Tenancy Act.

26 The finding recorded by the Revisional Authority way back on 23.01.1975 that the suit land is grassy land and not cultivable land is a finding of fact and the said finding had attained finality. In fact this finding was re-iterated by the original authority, affirmed by the Appellate Authority and thereafter confirmed by the Revisional Authority. On the basis of such a finding of fact, the Trial Court had decreed the suit, which finding of fact has been affirmed by the lower Appellate Court.

27 On a thorough consideration of the matter, this Court is of the view that there is concurrent finding of the fact by the Trial Court as well as by the lower Appellate Court. No error or infirmity is discernible; not to speak of any element of perversity, vitiating such a finding on fact. No substantial question of law arises under section 100 of the Civil Procedure

Code and therefore, court is of the view that the Second Appeal lacks merit and is liable to be rejected.

28 Having held so, in the related Writ Petition, court is of the further view that when the Revisional Authority i.e. the Tribunal had already accepted the finding that the suit land was un-cultivable where grass was growing naturally, there was no reason for it to take the view that the question as to whether provisions of the Tenancy Act was applicable or not, was required to re-adjudicated. Once the finding was arrived at that the land in question was un-cultivable where grass was growing naturally, it is axiomatic that the Tenancy Act would not be applicable. Therefore, the decision of the Tribunal to remand the matter back to the lower Appellate Court to re-examine this aspect of the matter is uncalled for and legally unsustainable. Consequently, impugned order dated 26.07.2017 is set aside and quashed.

29 Thus, while the Second Appeal is dismissed, the Writ Petition is allowed.

30 At this stage Mr. Shah, learned counsel for the Appellants in the Second Appeal and Respondents in the Writ Petition makes a prayer for stay of this

judgment for a reasonable period, though the same is opposed by Mr. Anturkar, learned senior counsel for the Respondents in Second Appeal and for the Petitioners in the Writ Petition.

31 After hearing learned counsel for the parties and on due consideration, it is hereby directed that effect of this judgment shall remain inoperative for a period of 30 days from today.

32 In view of the above order, Civil Application No. 1976 of 2012 and Civil Application No. 259 of 2016, both in Second Appeal, stand disposed of.

(UJJAL BHUYAN, J.)

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