

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO. 228/2011 IN
WRIT PETITION NO.1600/2011(D)

1. Parashram Tukaram Borhade,
Age 62 years, Occ. Agriculturist,
R/o. Kalambeshwar, Tq. Mehkar,
District Buldhana.

2. Sau. Pushpa Santosh Borhade,
Age 32 years. Occ. Agriculturist,
R/o. Kalambeshwar, Tq. Mehkar,
District Buldhana.

... **APPELLANTS**

-versus-

1, Sharadchandra Bansilal Khatri,
Aged Major, Occ. Nil.

2. Vijay Bansilal Khatir (Khatri),
Aged Major, Occ. Nil.

3. Smt. Maju @ Anju Bhagwat Khatri,
Aged Major, Occ. Nil.

4. Ku. Arti Bhagwat Khatri,
Aged Major, Occ. Nil.

All R/o Sarafa Bazar, Khamgaon,
Tq. Khamgaon, District Buldhana.

5. MRT, Nagpur, Commissioner Building,
Civil Lines, Nagpur.

.. **RESPONDENTS**

Shri S.S.Deshpande, Advocate for appellants.

Shri A.V.Bhide, Advocate for respondent nos. 1 to 4.

Mrs. S.S.Jachak, Assistant Government Pleader for respondent no.5.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

DATED : 6th September, 2021

Judgment : (Per A.S.Chandurkar, J.)

The order passed by the learned Single Judge on 26.04.2011
dismissing Writ Petition No.1600/2011 in limine is under challenge in this

Letters Patent Appeal.

2. Brief facts relevant are that it is the case of the respondent nos. 1 to 4 that they along with their brother were co-owners of agriculture field bearing Gat No.221. Portion of this agriculture land had been sold to the appellant no.1. On 08.06.2005 the said respondents got knowledge from 7/12 extracts of the aforesaid land that about 0.80 R as well as 0.77 R land was in unlawful occupation of the appellants. The names of the appellants were shown in the revenue records from 2002-03 as owners. The respondent nos. 1 to 4 hence initiated proceedings under Section 120 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short, 'the Act of 1958') for summary eviction of the appellants. By filing reply, the appellants opposed the aforesaid proceedings and took the stand that by virtue of an oral agreement entered into with Dr. Bhagwat Khatri, the appellants were in possession as owners thereof. A sale deed in that regard was not executed though certain payment was made by demand draft to said Dr. Bhagwat Khatri. On this count, it was prayed that the proceedings were liable to be dismissed.

3. The Sub-Divisional Officer by his order dated 30.12.2006 held that there was no material on record filed by the appellants in the form of agreement, demand draft, etc. to indicate any agreement between the parties so as to justify the appellants possession. On that count the application filed by the respondent nos. 1 to 4 was allowed and it was

declared that the appellants were in unauthorized occupation of the aforesaid lands. They were directed to restore the possession of the land to the respondent nos. 1 to 4. The Maharashtra Revenue Tribunal while considering two revision applications filed by both the parties by its own judgment dated 14.03.2011 confirmed the order passed by the Sub-Divisional Officer. Being aggrieved, the appellants preferred Writ Petition No.1600/2011 and by the order under challenge, the said writ petition was dismissed.

4. Shri S.S.Deshpande, learned counsel for the appellants submits that the possession of the appellants has been consistently shown from the year 1992 onwards in the revenue records. Another document indicating drawing of demand draft in the name of Dr. Bhagwat Khatri in the year 1992 was also placed on record. However without considering the case of the appellants in the proper perspective, the impugned orders have been passed. Since part of the land was admittedly purchased by the appellants, it was most probable that an oral agreement was entered into by the appellants for purchasing 1 H 57 R of land from Gat No.221. There was no jurisdiction with the revenue authorities to entertain the proceedings under Section 120 of the Act of 1958 in these facts. The respondent nos. 1 to 4 ought to have got their title adjudicated in view of the fact that the aforesaid proceedings were filed after the demise of Dr. Bhagwat Khatri. Placing reliance on the decisions in *Kashiram Shriram Dobale Vs. Maharashtra Revenue Trinunal, Nagpur 1970 Mh.L.J. 462* and *Dhondba Raoji Jadhao Vs. Krishnabai*

Gopalrao Raje and anr 1980 Mh.L.J. 466 it was submitted that the revenue authorities as well as the learned Single Judge erred in granting relief to the respondent nos. 1 to 4.

5. Shri A.V.Bhide, learned counsel for the respondent nos. 1 to 4 opposed the aforesaid submissions. According to him the revenue entries from the year 1992 onwards that were sought to be relied upon by the appellants did not pertain to land admeasuring 1 H 57 R from Gat No.221 which is the subject matter in the present proceedings but the same related to other portion of the land which was subsequently purchased by the appellants. The entries with regard to land admeasuring 1 H 57 R were from the year 2002-03 and on noticing the same in the year 2005, the present proceedings were immediately filed. The burden was on the appellants to justify their lawful possession. Having pleaded that there was an agreement between the parties the appellants ought to have placed some material on record to justify the same. All the Courts have found that there was not a single document to substantiate the claim made by the appellants. No fault could be found with the said adjudication in absence of any material document. Hence the Letters Patent Appeal was liable to be dismissed.

6. We have heard the learned counsel for the parties and we have perused the documents placed on record. It is undisputed that part of Gat No.221 was sold by Khatri family to the appellants with regard to which there is no dispute. The present dispute pertains to other land admeasuring

1 H 57 R from Gat No.221. It is the specific case of the respondent nos. 1 to 4 that only on 08.06.2005 they could notice the names of the appellants in the revenue record with regard to land admeasuring 1 H 57 R. It is on that basis that the present proceedings were initiated. Perusal of the deposition of the appellant no.1 with his cross-examination indicates that he has sought to rely upon the oral agreement with Dr. Bhagwat Khatri in the year 1992. He admitted that he neither issued any legal notice nor filed any proceedings seeking specific performance of that oral agreement. He further admitted that with regard to the said land, there was no agreement with the respondent nos. 1 to 4. He further stated that the revenue entries in the year 2002-03 in his name were without there being any application moved by him before the Talathi.

It is after considering this evidence and in absence of any *prima facie* material to indicate entering into an agreement of purchase in the year 1992 that the Sub-Divisional Officer and thereafter the Maharashtra Revenue Tribunal have held that the case as pleaded by the appellants could not be accepted. The ownership of the lands in question being that of the respondent nos. 1 to 4 is undisputed. If the appellants sought to protect their possession as being lawful, it was for them to have placed some documentary material on record to substantiate the claim that there was an oral agreement for purchasing the said land in the year 1992. In the absence of any material whatsoever no fault can be found with the conclusions recorded by the Sub-Divisional Officer and the Maharashtra Revenue Tribunal. The learned Single Judge has in this backdrop rightly confirmed

those orders. Reliance placed on the decision in *Kashiram Shriram Dobale* (supra) is misplaced. On the contrary, the observations in paragraph 13 go against the appellants and justify the orders passed in the present proceedings. It is also to be noted that it was the respondent nos. 1 to 4 who have approached the Civil Court by filing two suits under Section 6 of the Specific Relief Act, 1963 against the appellants seeking restoration of possession. In this backdrop, therefore, the ratio of the decision in *Dhondba Raoji Jadhao* (supra) does not support the case of the appellants.

7. Hence for the aforesaid reasons, we do not find any case made out to interfere with the adjudication under challenge. Letters Patent Appeal No.228/2011 stands dismissed.

The interim order passed in the letters patent appeal shall continue to operate for a period of eight weeks from today and shall cease to operate automatically thereafter. The parties shall bear their own costs.

JUDGE

JUDGE

Andurkar..