

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

WRIT PETITION NO. 2061 OF 2019

Shri Namdev Pandurang Mane and Ors. ...Petitioners

V/s.

Shri Madhukar Laxman Kulkarni Decd
through LRs and Ors. ...Respondents

Mr. S. G. Karandikar a/w. Mr. Abhijit Kadam i/b. Mr. Pradeep H. Patole, for the Petitioners.

Mr. Drupad S. Patil a/w. Mr. B. G. Ligade, for the Respondent Nos.1A to 1C.

Mr. S. H. Kankal, AGP for the Respondent / State.

**CORAM : C.V. BHADANG, J.
DATE : 6 OCTOBER 2022**

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. Rule made returnable forthwith. The learned counsel for the Respondent Nos.1A to 1C waives service. Learned AGP waives service for Respondent No.2. Heard finally by consent of parties.

2. This petition can be disposed of, on a short count.

3. A reference was made on the question of claim of tenancy made by the original Defendants which issue was referred by the Civil Court to Agricultural Lands Tribunal (ALT), Panhala, District Kolhapur. The ALT by an order dated 10 December

2014 refused to hold that the original Defendants were the tenants of the suit land on the Tillers day i.e. 1 April 1957. The ALT also held that the parties being members of the same family and closely related, cannot acquire tenancy rights. This order has been confirmed by the Sub Divisional Officer by order dated 26 April 2017 passed in Tenancy No.SR-01/2015 under Section 74 of the Bombay Tenancy and Agricultural Lands Act, 1948.

4. Feeling aggrieved, the Respondents approached the Maharashtra Revenue Tribunal (MRT) in Revision Application No.KP/VI/3/2017. The MRT by the impugned judgment and order dated 31 October 2018 has remitted the matter back to the ALT for deciding it afresh, in accordance with law.

5. I have heard the learned counsel for the parties. Perused record.

6. The learned counsel for the Petitioners, has placed reliance on the decision of this Court in *Dagadu Narayan Kale Vs. Uttamchand Panalal Dudhedia*¹ in order to submit that MRT can decide the issue of fact, if the evidence on record is sufficient. It is submitted that none of the parties are willing to lead any further evidence and therefore the MRT was not justified in directing the remand of the issue to the ALT. It is therefore submitted that the revision application be remitted back to the

¹(1963) 65 DLR 551

MRT for disposal, according to law.

7. The learned counsel for the private Respondents, in all fairness, did not dispute that none of the parties has expressed any intention to lead any further evidence. The learned counsel therefore, on instructions, states that the Respondents have no objection if the revision application is remitted back to the learned MRT.

8. I have considered the submissions made.

9. Rule 29 of the Bombay Tenancy and Agricultural Lands (B.R.T. Procedure) Rules, 1958 reads as under.

Rule 29 – In any application, the Tribunal may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the application, which has not been determined by the authority against whose order the said application has been made, or which has been wrongly determined by such authority by reason of any such illegality, omission or defect as is referred to in sub-section (1) of section 76 of the Act.”

10. The Division Bench of this Court in *Dagadu Narayan Kale (supra)* has interalia held that Rule 29 of the 1958 Rules confers jurisdiction on MRT to decide the issue of fact if the

evidence on record is sufficient.

11. A perusal of the impugned judgment and order passed by the MRT does not show that the MRT has recorded any finding that the evidence on record is insufficient so as to justify the order of remand. The MRT in para 11 of the impugned judgment, has merely observed that the issue has not been properly examined by the Authorities below and has remitted the matter back to the ALT. In such circumstances, in my considered view, the order of remand is not justified. The parties have expressed willingness for remand to the MRT.

12. In that view of the matter, the petition is partly allowed. The impugned order dated 31 October 2018 passed by the MRT, is hereby set aside. Revision Application No.KP/VI/3/2017 is restored back to the file of MRT for deciding it afresh, on its own merits and in accordance with law. Parties to remain present before the MRT on 14 November 2022.

13. Rival contentions of the parties, on merits, are left open. Rule is partly made absolute, in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.