

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

WRIT PETITION NO.1295 OF 2022

Shamrao Kondi Sutar Decd.

Legal Heir and Ors.

... Petitioners.

Versus

Jijabai Tatyaba Padwal and Ors.

... Respondents

Mr. D. D. Rananaware, for Petitioner

Mr. Nikhil Wadikar, a/w. Mr. Niranjan Kandade, Ms. Shweta Pandey i/b.

Mr. Nandu Pawar for Respondent No.1 & 2.

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 26 SEPTEMBER 2023.
PRONOUNCED ON : 10 OCTOBER 2023.

JUDGMENT:

1. Litigation spanning over almost 6 long decades has reached this Court in the form of a challenge to the decision of a tenancy claim made in a Reference by Civil Court to the Agricultural Lands Tribunal (ALT). The Suit for possession by the tenant instituted in the year 1965 continues to pend the decision, as Defendants have been litigating over correctness of decision of ALT about tenancy rights of Plaintiffs.

2. **Rule.** Rule made returnable forthwith and with consent of the learned counsels appearing for the parties, petition is called out for hearing.

3. By this petition, Petitioners challenge Judgement and order dated 13 June 2019 passed by the Maharashtra Revenue Tribunal, Pune Bench (**MRT**) in Revision Application No. 45 of 2002. By that order, the MRT has dismissed Revision Application No. 45 of 2002, in which Petitioners had challenged the order dated 29 January 2002 of Appellate Court-Deputy Collector passed in Tenancy Appeal No. 33 of 1994. Before the Deputy Collector, Petitioners had challenged order dated 31 March 1994 passed by Upper Tehsildar and ALT, Patan in Agricultural Revision No. 29 of 1965, by which Plaintiff Yashwant Bala Panaskar is declared as tenant in respect of the suit land and that in said capacity, he has also become a deemed purchaser thereof.

4. Briefly stated, facts of the case are that Yashwant Bala Panaskar has instituted Regular Civil Suit No.29 of 1965 in the Court of Civil Judge Junior Division, Patan for possession of the suit land bearing Survey Number 104/5, Village Bahule Tal. Patan District Satara. During trial of the suit, one of the issues encountered by the Trial Court was whether the Plaintiff was a tenant in respect of the suit property as on 01 April 1957 and whether he had become a deemed purchaser. The Trial Court therefore passed an order directing a Reference to the ALT for determination of the issue. The ALT accordingly proceeded to decide the reference by its Order dated 31 March 1994 holding that Plaintiff-Yashwant Bala Panaskar had become a tenant in respect of the suit land and that he also became a deemed purchaser of the suit land.

5. Petitioners, who are defendants in that suit, got aggrieved by the decision of the Reference by ALT and filed Tenancy Appeal No.33 of 1994 before the Deputy Collector-cum-Special Land Acquisition Officer-6, Sangli camp Satara. The Tenancy Appeal No. 33 of 1994 came to be rejected by order dated 29 January 2002. Petitioners thereafter filed Tenancy Revision Application No. 45 of 2002 before the MRT. The MRT, however proceeded to dismiss the Revision Application by order dated 14 June 2019 imposing costs of Rs. 2000/- on petitioner. The Petitioners have filed present petition challenging the decision of the MRT.

6. Mr. Rananaware, the learned counsel appearing for Petitioners would contend that the orders passed by the ALT, Deputy Collector and MRT suffers from the vice of perversity. He would submit that Dagadu Sutar himself was a tenant in respect of the suit property and was cultivating the same on tenancy basis. That the same was given to Vithu Shahaji Mahar up to the year 1954-55 on tenancy basis. That said Vithu Shahaji Mahar relinquished his tenancy rights in the year 1955, whereafter Dagadu Sutar was cultivating the land himself. That there is specific Mutation Entry No. 3338 regarding relinquishment of tenancy rights by Vithu Shahaji Mahar on 15 October 1957 on account of non-cultivation of land for 2 years. That the subsequent Mutation Entry No. 3339 recorded on same day i.e. on 15 October 1957 entered the name of Yashwant Bala Panaskar as an ordinary tenant. That therefore Mutation

Entry Nos. 1338 and 1339 prove that Yashwant Bala Panaskar was not cultivating the land as on the tillers day of 01 April 1957. He would further submit that Yashwant Bala Panaskar was never inducted as a tenant in respect of suit property. That Dagadu Sutar had borrowed sum of Rs.200/- from Yashwant Bala Panaskar and towards security for payment of interest, land was given for cultivation to Yashwant Bala Panaskar on 15 October 1957. That the said amount of loan was repaid by the Dagadu Sutar on 23 April 1962, after which the land was returned by Yashwant Bala Panaskar to Dagadu Sutar. In support of his contentions, he would place on record photocopies of two mortgage deeds. That in such circumstances, the findings recorded by the ALT, Deputy Collector and MRT about tenancy rights of Yashwant Bala Panaskar are totally perverse.

7. Mr. Rananaware would further submit that the entries in cultivation column of revenue records showing name of Bala Panaskar or Yashwant Bala Panaskar pertaining to the years 1952 onwards are contrary to the factual position. That Mutation Entry No. 3338 clearly proves that Vithu Shahaji Mahar was cultivating said land as a tenant and his name came to be removed on 15 October 1957 on account of failure to cultivate the land for more than two years. This would show that Vithu Shahaji Mahar was cultivating the land till the year 1955 and to that extent, the entries made in the cultivation column of revenue records pertaining to the years 1952 onwards are clearly contrary. He would

submit that ALT, Deputy Collector and MRT erred in laying emphasis on stray entries in cultivation column, which are contrary to the factual position. He would submit that while conducting an inquiry under Section 70-B of the Maharashtra Tenancy and Agricultural Lands Act 1948 (**Tenancy Act**), the ALT was required to undertake a detailed enquiry into the factual aspects and that the decision cannot be made merely on the basis of revenue entries. That since the Dagadu Sutar himself a was tenant, Yashwant Bala Panaskar would at the highest become a sub-tenant and his rights would be barred under Section 27 of the Tenancy Act. That the burden of proving the tenancy was cast on the Respondents, which has not been discharged. He would submit that the orders passed by ALT, Deputy Collector and MRT therefore deserve to be set aside.

8. *Per Contra* Mr. Wadikar, the learned counsel appearing for Respondent Nos. 1 and 2 would oppose the petition and support the orders passed by ALT, Deputy Collector and MRT. He would submit that Petitioners are raising contradictory contentions. That in paragraph 6 of written statement filed in Suit, Petitioners (Defendants) have contended that the possession of the land given to Dagadu Sutar in pursuance of a 'receipt' on account of impermissibility of execution of a mortgage in view of bar under the Moneylenders Act, whereas the copies of some mortgage deeds are now sought to be placed on record by Petitioners, contrary to their defence in the written statement. That those mortgage

deeds pertain to the year 1914, thereby completely belying the defences sought to be raised by Petitioners. That respondents discharged the burden by proving cultivation of the land by Yashwant Bala Panaskar since the year 1952. That the orders passed by the ALT, Deputy Collector and MRT do not suffer from the vice of perversity. He would pray for dismissal of the petition.

9. Rival contentions of the parties now for my consideration.

10. In the Suit instituted in the year 1965 by Plaintiff-Yashwant Bala Panaskar, who is now no more and is represented by his legal heirs, a prayer for possession of the suit property is made against respondents herein. That Suit instituted in the year 1965 has been pending for the last 58 long years. In that Suit, a Reference was made to the ALT under provisions of Section 85A of the Tenancy Act for determination of issues as to whether Plaintiff was the tenant of land on or before 01 April 1957 and whether he later become its deemed purchaser. ALT ruled in favour of Plaintiff-Yashwant Bala Panaskar and the its order is upheld by the Deputy Collector and MRT as well.

11. Correctness of the orders passed by the ALT, Deputy Collector and MRT is sought to be questioned in the present Petition on various counts. Since the findings recorded by ALT, Deputy Collector and MRT would practically decide the issue before the Civil Suit, which is seized of the Suit, I have given anxious consideration to various points

raised by Mr. Rananavare, the learned counsel for Petitioners.

12. Firstly, it is Petitioners' case that Dagadu Sutar himself being a tenant, Yashwant Bala Panaskar cannot claim any tenancy rights in respect of the suit land under Section 27 of the Tenancy Act. However, perusal of the written statement filed in the Suit would indicate that this defence is not taken. On the contrary, the defence taken in the written statement is that Dagadu Sutar inducted Víthu Shahaji Mahar as tenant up to the year 1954 to 1957. Even in the present petition, Petitioner has not raised the issue of non-entitlement of Respondents to claim tenancy rights in their capacity as subtenant under Section 27 of the Tenancy Act. Having not raised these issues either before the Civil Court or before the three authorities below and even in the present petition, the Petitioners are *estopped* from raising the same directly at the stage of hearing of the Petition. Though it is sought to be contended by Mr. Rananaware that applicability of Section 27 of the Tenancy Act is law point and that the same can be raised at any time without a pleading. I am unable to agree with this submission. Even if the issue of rights and entitlement under a Statute may be a law point, factual assertion to demonstrate existence or non-existence of statutory rights must be made out in the pleadings. Denying the rights under section 27 of the Tenancy Act is premised on an assertion that Dagadu Sutar himself was a tenant of another landlord. This fact is required to be pleaded and proved. But the Petitioners miserably failed to do so. Therefore, Petitioners are now precluded from

raising the said issue. The contention of subtenancy therefore deserves outright rejection as a mere ingenuity of the learned counsel across the bar unsupported by pleadings or evidence.

13. In the pleadings before the Civil Court and the three authorities below, Petitioners raised contradictory defences. The first defence of the Petitioners is that one Vithu Shahaji Mahar was a tenant inducted by Dagadu Sutar up to the year 1954-55 who relinquished his tenancy rights and whose name was deleted on effecting Mutation Entry No. 3338. This aspect is pleaded in the written statement. However, this story is not carried forward in pleadings both before ALT, Deputy Collector and MRT. The documents being Mutation Entry No. 3338 which now appears to be the sheet anchor of Petitioners' case, is not annexed with the Memo of the petition. A copy of the said Mutation Entry is handed over across the bar by the learned counsel for the Petitioner during the course of hearing of the Petition. There is nothing on record to indicate that the said Mutation Entry was brought to the notice of the ALT, Deputy Collector and MRT. Be that as it may, even if the Petitioners is permitted to rely upon Mutation Entry No. 3338 directly before this court, the same would not make the case of Petitioners any better. This is because by placing reliance on Mutation Entry No. 3338 and 3339, the defence of the Petitioners is that name of Vithu Shahaji Mahar was deleted and name of Yashwant Bala Panaskar was entered on 15 October 1957. The entry of name of Yashwant Bala

Panaskar on 15 October 1957 is shown in his capacity as 'ordinary tenant'. This Mutation Entry No. 3339 belies the other defence taken by the Petitioners that the land was given to Yashwant Bala Panaskar as a security for repayment of loan. Mutation Entry No. 3339 reflects that Dagadu Sutar became 'ordinary tenant' of the land. If land was handed over to Yashwant Bala Panaskar merely as a security to loan transaction, why name of Yashwant Bala Panaskar was permitted to be entered as a 'ordinary tenant' is not explained in any manner. This is how Petitioners have taken contradictory defences.

14. I now proceed to examine Petitioners' other defence of handing over possession of land as security for land transaction. The learned counsel for the Petitioner has placed on record copies of two mortgage deeds to prove the theory of borrowing the amount of Rs.200/- and taking back possession of the land in the year 1963 after repayment of the amount. The copies of the said documents are not fully legible. The first document appears to be the mortgage deed pertaining to the year 1912. The same was issued to have been executed on stamp paper purchased on 28 August 1912. This document is apparently in respect of borrowing Rs. 200/- by Dagadu Sutar. However, since the said document is pertaining to the year 1912, same is absolutely irrelevant for the purpose of deciding the issue in the present case. The second document appears to be the mortgage deed executed on 25 August 1914 by which Bala Panaskar has apparently lent Rs.250/- to Dagadu Sutar. Again, this

document is pertaining to the year 1914 and is irrelevant. It appears that on the basis of the said documents pertaining to the year 1912 and 1914, the Respondents have set up a defence of borrowing Rs. 200/- and handing over possession of land towards security for payment of interest. However, no document pertaining to the year 1957 is placed on record by which the transaction in question has allegedly taken place. In Written Statement Respondent himself pleaded that there was prohibition of execution of mortgage deed with possession under Money Lenders Act and therefore a 'receipt' was executed towards said transaction. However, the said receipt has not been produced by the Petitioners. Petitioners are unable to explain how two mortgage deed could surface contrary to the defence of non-execution of mortgage deed taken in written statement. In fact, production of those two mortgage deed would also belie the theory of prohibition on execution of mortgage deed taken by Petitioners in their written statement. Therefore, it is difficult to accept the defence of handing over possession of the land towards security for repayment of interest to Yashwant Bala Panaskar.

15. On one hand there is contradictory defences taken by Petitioners about relinquishment of tenancy rights by Vithu Shahaji Mahar in the year 1954 - 1955 and handing over possession of suit land in favour of Yashwant Bala Panaskar towards security for loan of rupees 200/- and on the other hand there are specific entries in the cultivation column showing that Panaskar family was cultivating land since the year

1952 onwards. The entries show that Bala Panaskar was cultivating land in the year 1952. Yashwant Bala Panaskar was cultivating the same since the year 1957. Mutation Entry No. 3339 also shows that Yashwant Bala Panaskar was cultivating the land from 15 October 1957. The authorities below have relied upon the said entries in the cultivation column to arrive at a conclusion that Yashwant Bala Panaskar / his predecessors were cultivating the suit land on the tillers day. In absence of any other evidence of cultivation by Petitioners to the contrary, reliance placed on entries in cultivation column by the ALT, Deputy Collector and MRT cannot be faulted. Petitioners have miserably failed to dispel the strong presumption created by entries in the cultivation column. Far from proving that Petitioners were actually cultivating the land as on 1 April 1957, Petitioners went on taking contradictory defenses during last 58 years of pendency of litigation. Their urge for taking newer defenses has not ended right till arguments in the present Petition when copies of Mutation Entry No. 3338 and two mortgage deed of 1912 and 1914 were causally flung across the bar without any pleadings. Their defence of handing over possession as security for repayment of interest on loan is found to be utterly false. Their conduct in casually producing mortgage deeds pertaining to the years 1912 and 1914 to prove alleged loan transaction of 1957 is definitely not appreciable.

16. Considering the overall conspectus of the case, it is difficult to hold any patent error has been committed by ALT, Deputy Collector

or MRT in deciding the issue in Reference. I therefore do not find any merit in the petition. Writ Petition is accordingly dismissed without any order as to costs. While parting it must be observed that the suit has been pending since the year 1965. It is therefore appropriate that the Trial Court decides the suit in an expeditious manner.

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SANDEEP V. MARNE, J.