



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 125 OF 2023
WITH
CIVIL APPLICATION NO. 5569 OF 2024
WITH
CIVIL APPLICATION NO. 11672 OF 2011**

Late Gambhir Yasin Jakatdar (Dead through LRs)

1. Rehana Shaikh Gambhir Jakatdar
Age : 52 Years, Occ. Household
2. Shaikh jakir Shaikh Gambhir Jakatdar
Age : 32 Years, Occ. Business
3. Shaikh Javid Shaikh Gambhir Jakatdar
Age: 28 Years, Occ. Business
4. Shaikh Abid Shaikh Gambhir Jakatdar
Age : 24 years, Occ. Business,
5. Shaikh Nasim Shaikh Gambhir Jakatdar,
Age : 16 Years, Occ. Education
6. Shaikh Wahid Shaikh Gambhir Jakatdar
Age : 13 Years, Occ. Education
7. Jilhi Shaikh Gambhir Jakatdar
Age : 18 Years, Occ. Education
8. Sunno @ Asama Shaikh Gambhir Jakatdar
Age : 10 Years, Occ. Education
9. Nasimbi Shaikh Kalim,
Age : 31 Years, Occ. Household
10. Najambi Shaikh Ramjan,
Age : 29 Years, Occ. Household
11. Munni Shaikh Gambhir Jakatdar
Age : 22 Years, Occ. Household,
All are residing at Varangaon

Taluka Bhusawal, Dist. Jalgaon .. Appellants
(Original Defendants)

VERSUS

Late Bhaskarrao Kashirao Deshmukh,
Through L.Rs.

1. Late Indubai Bhaskarrao Deshmukh,
Through L.Rs.
2. Late Bhaiyyasaheb Bhaskarrao Deshmukh
Through L.Rs.

2.1 Smt. Surekha Bhaiyyasaheb Deshmukh,
Age : 55 Years, Occ. Household

2.2. Shri. Vikas Bhaiyyasaheb Deshmukh,
Age : 31 Years, Occ. Service

2.3 Ku. Arati Bhaiyyasaheb Deshmukh,
Age : 24 Years, Occ. Household

2.4 Shri. Sudhir Bhaiyyasaheb Deshmukh,
Age : 29 Years, Occ. Service

2.5 Shri. Prvin Bhaiyyasaheb Deshmukh,
Age : 22 Years, Occ. Agriculture

3. Nilkantha Bhaskarrao Deshmukh,
age : 52 Years, Occ. Agriculture

4. Prakash Bhaskarrao Deshmukh,
Age : 52 Years, Occ. Agriculture

5. Sanjay Bhaskarrao Deshmukh,
Age : 50 Years, Occ. Agriculture

All are residing Near Bus Stand Varangaon,
Behind Rajan Medical Store, Varangaon,
Tal. Bhusawal, Dist. Jalgaon

....Respondents
(Original Plaintiffs)

...
Mr. M.M. Bhokarikar, Advocate for the Appellants
Mr. Ajit M. Gholap, Advocate for the Respondents.
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 09.07.2024

ORDER:-

1. Heard rival submissions on admission.
2. The appellants have challenged concurrent findings of both the Courts below.
3. Brief facts are as under :-

The appellants were the original defendants in Regular Civil Suit No. 394 of 1983 and the respondent namely Late Bhaskarrao Kashirao Deshmukh, who was original plaintiff, had filed the Regular Civil Suit No. 394 of 1983 for possession of the suit property i.e. 40 x 40 sq. ft area out of Gut No. 458 total admeasuring 1 H 65 R having *potkharab* area of 2 R. It is contended by the respondent/ plaintiff that the suit property was given on rent to Late Gambhir Yasin Jakatdar for cattle shed on monthly rent of Rs.25/-. The said land thereafter converted into non agricultural land. After conversion of the said land, the area rented to the appellants/defendants was

included in Plot No.7. After conversion of the suit land into Non Agricultural land, the respondent/plaintiff vide notice dated 19.08.1983, terminated the tenancy of defendants on 30.09.1983 and thereafter filed suit for possession and recovery of arrears of rent as well as mesne profit.

4. On the contrary, the original tenant Gambhir, vide notice reply dated 26.08.1983 denied the contents of the aforesaid notice. According to him, the suit land was given to him on the monthly rent of Rs.5/-, which he was regularly paying, but the respondent did not issue any receipt to him. Thereafter, when the land was converted for Non Agricultural purpose, it was agreed by the respondent to sell the suit land for the consideration of Rs.3,000/- which was already paid to the plaintiff. Thus, he prayed for dismissal of the suit. The learned Civil Judge, Junior Division, Bhusawal (herein after referred to as learned trial Court) conducted the trial and decreed the suit in favour of the respondent on 10.03.2005.

5. Feeling aggrieved with the said judgment and decree passed by the learned trial Court in Regular Civil Suit No.394 of 1983, the present appellants preferred Regular Civil Appeal No.87 of 2005 before the learned District Judge, Jalgaon

(Hereinafter, referred to as the learned First Appellate Court) on 23.03.2005. However, the same has been dismissed on 20.10.2010. Thus, the present Second Appeal has been filed against the concurrent findings of both the learned Courts below.

6. The learned counsel for the appellants vehemently argued that both the learned Courts below did not frame proper issues/points for consideration, especially the issue in respect of agreement to sell, as contended by the present appellants. According to him, the suit land was agricultural land, and therefore, provisions of The Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the B.T.A.L.Act") were applicable and under Section 85 of the B.T.A.L.Act, Civil Court was not having jurisdiction. He further argued that the termination notice of six months was required according to Section 106 of the Transfer of Property Act, but both the learned Courts below wrongly observed that notice of one month was sufficient. According to him, the appellants have also filed Civil Application No. 5569 of 2024 for continuation of interim relief which was vacated during the pendency of this appeal and for additional evidence to establish the fact that the appellants are in possession of the area of 100 x 50 sq. ft

and not 40 x 40 sq.ft as contended by the respondent/plaintiff. He also relied on the following judgments

:-

- (I) **Chandrabhan Through LRs Vs. Saraswati, AIR 2022 SC 4601**
- (II) **Jatinder Singh Vs. Mehar Singh, AIR 2009 SC 354**
- (III) **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das, AIR 2008 SC 2139**
- (IV) **Namdeo Pandurang Khedkar Vs. Shahi Gupta Masjid, Chandrapur, 2014 (4) ABR 657**
- (V) **Gundaji Satwaji Shinde Vs. Ramchandra Bhikaji Joshi, AIR 1979 SC 653**
- (VI) **Bhimaji Shankar Kulkarni Vs. Dundappa Vithappa Udapudi AIR 1966 SC 166**

7. Thus, he raised following substantial questions of law :-

- (i) That, Civil Court was not having jurisdiction in view of Section 85 of the B.T.A.L.Act.
- (ii) That, both the learned Courts below wrongly observed that the respondents under valid notice terminated the tenancy.

8. On the contrary, the learned counsel for the respondent

plaintiff strongly opposed the submissions made on behalf of the appellants. According to him, the notice by which the tenancy of the appellants has been terminated, is valid as per Section 106 read with Section 107 of Transfer of Property Act. According to him, second part of Section 106 is applicable in this case, since the appellants could not establish the fact that the rent was payable annually. According to him, both the learned Courts below have properly considered the evidence on record by framing proper issues/points and according to him no Court Commissioner can be appointed at this juncture since it was never pleaded by the appellants in their written statement that they are in possession of 100 x 50 sq. ft. area. He pointed out that the preliminary issue was already framed in respect of jurisdiction and even after observation of this Court and remand of the matter, the trial Court rejected the application Exh.25 filed for framing preliminary issue by observing that there was no bar of Section 85 of the B.T.A.L.Act and there was no need to decide the question of tenancy under the aforesaid Act. He pointed out that this Court in Civil Revision Application No. 380 of 1998 had found no jurisdictional error on the part of learned trial Court in rejecting the amendment application of the

present appellants. Moreover, even the application filed by present appellants for seeking permission to file fresh written statement was rejected by the learned trial Court and the said decision has been upheld by this Court in Writ Petition No. 7074 of 2004. Both these orders are not challenged by the appellants further. Thus, he submitted that no substantial questions of law as raised by the learned counsel for the appellants are involved in this appeal and the same is liable to be dismissed at admission stage.

9. So far as the first substantial question of law raised by the learned counsel for the appellant is concerned, it is in respect of bar to jurisdiction of Civil Court to entertain the present dispute. The learned counsel for the appellants vehemently argued that since the suit land being an agricultural land was rented to the appellants which falls under the provisions of The the B.T.A.L.Act and for that purpose Section 85 of the said Act bars the jurisdiction of Civil Court. It is to be noted that such objection to the jurisdiction of the Civil Court was earlier raised and at that time the learned trial Court after hearing the parties had referred the matter vide order dated 24.01.1989 to the competent authority for deciding the preliminary issue in

respect of the tenancy under the B.T.A.L.Act. However, the said order was challenged before this Court in Civil Revision Application No.189 of 1989 and at that time this Court had set aside the said order and directed the learned trial Court to see first whether there was enough material to refer the matter to the tenancy Court. Thereafter, the learned trial Court, as directed by this Court, decided application Exhibit-25 again and rejected the same by observing that there was no sufficient material on record or pleading regarding the applicability of the the B.T.A.L.Act.

10. As such, the learned trial Court found that there was no necessity to frame preliminary issue on the tenancy under the provisions of The Bombay Tenancy and Agricultural Lands Act, 1948 This order dated 06.10.1994 has been remained unchallenged and therefore, it cannot be agitated again and again. Therefore, substantial question of law raised by the learned counsel for the appellants has already been decided and answered satisfactorily.

11. So far as second substantial question of law is concerned, it is contended by the learned counsel for the appellants that since the lease of the suit land between the

rival parties was from year to year and therefore, six months notice was required to terminate the same.

12. On the contrary the learned counsel for the respondent/plaintiff submitted that no such six months notice was in fact required for termination of lease, since it was case of plaintiff that the rent was payable monthly and therefore, the respondent rightly terminated the tenancy of appellants by issuing 15 days notice. It is significant to note that though it is claimed by the appellants that the annual rent of the suit land was recoverable on yearly basis but they have not adduced any satisfactory evidence to that effect and therefore, in absence of any such evidence both the learned Courts below have held that the notice for termination of tenancy was valid one. The second part of Section 106 of Transfer of Property Act has definitely provided termination of tenancy by 15 days notice when the tenancy or lease is from month to month. Moreover, as per Section 107, it is mandatory to create lease of immovable property from year to year or reserving yearly rent by way of registered instrument only. In this case no such instrument is brought on record by the appellant. Therefore, in this regard also no substantial question of law as raised by the learned counsel for the

appellant appears to be involved.

13. So far as evidence on record is concerned, there are concurrent findings of both the learned Courts below in respect of each and every contention of the appellants such as the tenancy was yearly tenancy and that it was agreed by the respondent to sell the suit land after its conversion for the consideration of Rs. 3,000/- etc. against the appellant only.

14. The learned counsel for the appellants has also filed Civil Application No. 5569 of 2024 for continuation of the interim relief and for adducing additional evidence. Admittedly, the interim relief has been vacated by observing the highly negligent conduct of the appellants. Moreover, so far as prayer of adducing additional evidence is concerned, the appellants have produced on record certain map of measurement claiming thereto that they are in possession of additional area i.e. area of 100 x 50 sq.ft. instead of the area mentioned in the plaint i.e. 40 x 40 sq.ft. He relied upon judgment of Honourable Apex Court in the case of **Jatinder Singh Vs. Mehar Singh, AIR 2009 SC 354** wherein it is observed that when the appellant filed application for adducing additional evidence in Second Appeal then the dismissal of appeal

without deciding application for additional evidence is improper.

15. The learned counsel for the appellant pointed out that when the very foundation of the case of respondent/plaintiff is falsified by the map on record prepared by the competent person then this aspect has to be dealt with by appointing Court Commissioner such as T.I.L.R to measure the exact area under possession of the appellants. However, there is no pleading at all in the written statement of the appellants that they are in possession of 100 x 50 sq. ft area. Moreover, their application for amendment of the written statement or application to file fresh written statement is already rejected up to this Court.

17. Moreover, the map prepared by the appellants through their own valuer cannot be relied upon at such belated stage. On the contrary, it appears that by filing such application the appellants are trying to protract the proceeding. It appears that all the substantial questions of law raised by the learned counsel for the appellants appear to have answered satisfactorily by both the learned Courts below and that too on the basis of evidence on record. Therefore, the present Second

Appeal stands dismissed on the admission stage along with the pending civil applications and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

ysk