



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

**SECOND APPEAL NO.125 OF 2018
WITH
CIVIL APPLICATION NO.2943 OF 2018
IN
SECOND APPEAL NO.125 OF 2018**

1. Jyotiram /o Bhagu Chopade
Died Through L. Rs.
- 1-A. Uttam s/o Jyotiram Chopade,
Age:- 62 years, Occ. Agri.,
- 1-B. Vinayak s/o Jyotiram Chopade,
Since deceased Through L. Rs.
- 1-B-1. Smt. Meerabai w/o Vinayak Chopade,
Age:- 63 years, Occ. Household,
- 1-B-2. Ku. Pooja d/o Vinayak Chopade,
Age:- Major, Occ. Nil,
- 1-B-3. Ku. Pallavi d/o Vinayak Chopade,
Age:- Major, Occ. Nil,
- 1-B-4. Sagar s/o Vinayak Chopade,
Age:- Major, Occ. Nil,

Appellant No. 1-A to 1-B-4
R/o Chincholirao Tq. and Dist. Latur

- 1-C. Padminibai Jyotiram Chopade,
Age:- 83 years, Occ. Household,
R/o Chincholirao Tq. and Dist. Latur
- 1-D. Bhagirathibai Nagnathrao Shinde,
Age:- 55 years, Occ. Household,
R/o Khandapur, Tq. & Dist. Latur
- 1-E. Sunita w/o Sambhajirao Patil,
Age:- 50 years, Occ. Household,
R/o Warwanti, Tq. & Dist. Latur

..Appellants
(Orig. Deft. No.2 to 2-E)

Versus

1. The State of Maharashtra,
Through The Collector, Latur
2. Devabai w/o Shivnath Adsule ...Died Abated
3. Shrawan S/o Shivnath Adsule,
Since deceased Through L. Rs.
- 3-a] Suman w/o Sharawan Adsule,
Age:- 65 years, Occ. Household,
R/o Chincholirao, Tq. & Dist. Latur
- 3-b] Jayshri w/o Prakash Gade,
Age:- 47 years, Occ. Household,
R/o Chincholirao, Tq. & Dist. Latur
At Present R/e Jyoti Pride,
Satara Parisar, Aurangabad-431005
- 3-c] Samadhan s/o Shrawan Adsule,
Age:- 44 year, Occ. Agri.,
R/o Chincholirao, Tq. & Dist.
Latur At Present R/o Milind Nagar,
Pimpri, Pune-17
4. Sonerao s/o Shivnath Adsule,
Age:- 50 years, Occ. Labour,
R/o As above
5. Sopan s/o Shivnath Adsule,
Age:- 48 years, Occ. Labour,
R/o As above
6. Mainabai w/o Prakash Kamble,
Age:- 45 years, Occ. Household,
R/o As above
7. Pushpbai w/o Shyam Bansude,
Age:- 40 years, Occ. Household,
R/o As above
8. Bhagabai w/o Yadeo Ghodke,
Age:- 38 years, Occ. Household,
R/o As above
9. Anita w/o Ashtuk Lomte,
Age:- 49 years, Occ. Household,
R/o. At Post Thodsarwadi

Tq & Dist. Osmanabad.

..Respondents
(Resp. No.1 and 9 are Deft. No.1
and 2-F and Resp. No.2 to 8 are
Orig. Plaintiffs.)

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Mr. V. D. Gunale, Advocate for the Appellants.

Mr. V. S. Badkh, AGP for Respondent No.1-State.

Respondent No.2-Died/Abated.

Ms. Madhaveshwari Mhase, Respondent Nos.3-a to 3-c and 4 to 8.

Respondent No.9 is served.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED 02nd DECEMBER, 2024.

ORDER:-

1. The appellants/legal representatives of original plaintiff take exception to judgment and decree dated 22.08.2017 passed by Ad-hoc District Judge-1, Latur in Regular Civil Appeal No.11/1994, thereby reversing judgment and decree dated 12.04.1991 passed by 2nd Joint Civil Judge Senior Division, Latur in Regular Civil Suit No.554/1988.

2. The plaintiff filed Regular Civil Suit No.554/1988 seeking declaration that order dated 26.04.1982 passed by Special Deputy Collector, Osmanabad under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act (in short 'the Act') in respect of suit land as well as order dated 22.11.1982 passed by M.R.T., Aurangabad in Appeal No.191/A/1982 is null and void. The plaintiffs further sought declaration that confirmation of certificate under Section 38(E) of the Act in favour of defendant no.1 is invalid and ineffective in view of default in payment of purchase price

within stipulated period and also sought relief of permanent injunction from executing impugned orders of revenue authorities.

3. According to plaintiffs, name of Shivnath Limba Adsule was wrongly recorded as protected tenant over suit land, although he had surrendered suit land in the year 1951. The plaintiff was continuously in possession of suit property. However, declaration of ownership under Section 38(E) of the Act has been made in favour of defendant-Shivnath without any notice to plaintiff. The defendant no.2 made application under Section 98 of the Act alleging that on 17.04.1963 he has been conferred with ownership of suit land. However, he has been dispossessed by plaintiff and sought relief for restoration of his possession under Section 98 of the Act before the Revenue Authorities. The Special Deputy Collector, Osmanabad entertained such application without jurisdiction and passed order dated 26.04.1982 directing restoration of possession of tenan. The said order was challenged by appellant before M.R.T., Aurangabad, but his appeal has been dismissed. In alternative, plaintiff pleaded that his title is perfected by way of adverse possession. It is further contended that defendant has not deposited purchase price within stipulated period and lost his right accrued under Section 38(E) of the Act.

4. The defendant contested the claim contending that he was protected tenant. The purchase certificate is issued to him by

competent authority and his name is mutated in the record as owner on 08.07.1975. He never surrendered tenancy right in favour of plaintiff. The suit is not maintainable in this form. The Civil Court has no jurisdiction to entertain the prayer in the suit.

5. The Trial Court framed issues based on pleadings of the parties and recorded finding that Tenancy Courts acted without jurisdiction. Consequently, declared plaintiff as owner and defendants certificate of ownership as *void ab initio*. The Trial Court further held that suit is within limitation and Civil Court has jurisdiction to entertain the suit for grant of relief as prayed.

6. The legal heirs of defendant no.2 preferred Regular Civil Appeal No.11/1994 before District Court at Latur, who reversed the decree holding that orders of Tenancy Court were in accordance with law and Civil Court has no jurisdiction to make declaration in respect of orders of Tenancy Court. It is further held that suit is barred by limitation. Consequently, judgment and decree passed by Trial Court has been quashed and set aside and suit came to be dismissed.

7. Mr. Gunale, learned Advocate appearing for the appellants submits that appellants are in possession of property. They cannot be dispossessed by taking recourse to Section 98 of the Act. The declaration of ownership under Section 38(E) of the Act was never

acted upon and it was not valid. The appellants were never given opportunity of hearing before passing such order. The Trial Court had rightly decreed the suit after considering relevant provisions of law and appreciation of evidence. However, Appellate Court erroneously reversed the decree.

8. Per contra, Ms. Mhase, learned Advocate appearing for respondent nos.3A to 3C and 4 to 8 supports the impugned judgment and decree passed by the Appellate Court. She points out that defendant was declared as protected tenant of the suit land and he was put into possession since 17.04.1963. His name was consistently appearing in the revenue record as tenant in possession. However, he was illegally dispossessed. Consequently, defendant/tenant had moved an application under Section 98 of the Act for restoration of possession. The same has been granted by the competent authority. The order passed by the revenue authority is confirmed in Appeal by M.R.T., Aurangabad. She would further submit that Appellate Court has rightly concluded that suit is not maintainable, so also it is barred by limitation.

9. Having considered submissions advanced, it can be observed that defendant was tenant in possession of suit land. Accordingly, he was declared as protected tenant. The tenancy certificate has been issued in his favour under Section 38(E) of the Act, which is conclusive proof of ownership. It appears that, on 24.06.1978 the

defendant had moved an application under Section 98 of the Act seeking summary eviction of plaintiff from the land. The said application was allowed since defendant was already declared as protected tenant and he was entitled to remain in possession of suit land. The M.R.T., Aurangabad confirmed the order of summary eviction in Appeal No.191/A/1982 filed by plaintiff. In this background, First Appellate Court recorded finding that suit seeking declaration against orders passed by the revenue authorities under special Act cannot be entertained. Reference is given to the provisions of Section 99(2) of the Act, which lays down express bar to the jurisdiction of Civil Court.

10. The Appellate Court on appreciation of material on record concluded that no material irregularity or jurisdictional error is shown in the orders of revenue authorities, by which Civil Court would assume jurisdiction to declare such order as invalid.

11. Secondly, Appellate Court concluded that suit is barred by limitation, since first cause of action arose to plaintiff in the year 1975, when learned Special Deputy Collector passed order of restoration of possession under Section 98 of the Act, which has been later on confirmed in the year 1982 by M.R.T., Aurangabad while dismissing Appeal of plaintiff/landlord. The present suit is instituted in the year 1988 seeking declaration against such orders. Since, record shows that plaintiff participated in proceeding before

M.R.T., Aurangabad and he was aware about the orders passed by revenue authorities, he could have filed suit within a period of three years, as prescribed under Article 58 or 113 of the Limitation Act. The plaintiff can said to have first cause of action, when order was passed by the Special Deputy Collector in the year 1975 and secondly, when M.R.T., Aurangabad confirmed it in the year 1982. The plaintiff was expected to file suit within a period of three years from the date, when first cause of action arose. However, suit is instituted in the year 1988. Consequently, suit is hopelessly barred by limitation.

12. In light of aforesaid discussion, no substantial question of law arises for consideration in this second appeal. Hence, Second Appeal stands dismissed.

13. In view of dismissal of Second Appeal, Civil Application does not survive and stands disposed of accordingly.

(S. G. CHAPALGAONKAR)
JUDGE