

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3486 OF 1999.

1. Shri Babusaheb Babagonda Patil]
Since deceased, by his heirs:-]
- 1A. Shri Subhash Bapu Patil]
- 1B. Shri Balasaheb Bapu Patil]
- 1C. Shri Prakash Bapu Patil [*Deleted as per Court's order*]]
- 1D. Shri Raosaheb Bapu Patil]
since deceased by heirs:]
- 1D(a) Smt. Shridevi Raosaheb Patil]
since deceased by heirs :]
- 1D(b) Bipin Raosaheb Patil, Age – 15 years]
Occupation – Education,]
- 1D(c) Master Jaykumar Raoso,]
Age: 13 years, Patil, Occ. - Education,]
All r/o Galli No.7, Jaysingpur,]
Taluka – Shirol, District – Kolhapur.]
- 1D(b) and 1D(c) minors through]
Guardian uncle Shri Balasaheb Bapu]
Patil]
- 1E. Shri Vijay Bapu Patil [*Deleted as per Court's order*]]
- 1F. Shri Bharat Bapu Patil]
- 1G. Smt. Krishnbai Bapu Patil [*Deleted as per Court's order*]]
- 1H. Sou. Sunanda Jakhagonda Patil]
since deceased, by his heirs:]
- 1H-a) Shri Jakhagond Babuso Patil,]
- 1H-b) Kum. Sujata Jakhagonda Patil,]
Both residents of Huparil,]
Taluka – Hatkanangale,]
District – Kolhapur.]
- 1H-c) Sou. Sunita Balaso Bhsagi]
Resident of Jaysingpur,]
Tal. Hatkanangale, District Kolhapur.]
- 1H-d) Shri Sunil Jakhagonda Patil]
- 1H-e) Kum. Savita Jakhagonda Patil]
- 1H-f) Shri Sushil Jakhagonda Patil]
- 1H-g) Shri Sachin Jakhagonda Patil]

- 1H-h) Sou. Suman Balwant Shirale]
 1H-i) Kum. Suvarna Bapu Patil]
 1H-d to 1H-i residents of Huparil,]
 Taluka – Hatkanangale,]
 District – Kolhapur.]
 1H-j) Kum. Kanchan Bapu Patil]
 Resident of Jaysingpur,]
 Taluka – Shirol, District – Kolhapur.]
2. Shri Paygonda Babgonda Patil]
 since deceased, by his heirs :-]
 2-A) Shri Vasant Paygonda Patil *[deleted as]
 per Court's order]*]
 2-B) Shri Jingonda Paygonda Patil]
 since deceased through legal heirs:]
- 2-B-A) Smt. Laxmibai Jingonda Patil.]
 R/o Hingangaon]
 Taluka – Hatkanangale.]
 District – Kolhapur.]
 2-B-B) Shri Ramgonda Jingonda Patil.]
 R/o as above.]
 2-B-C) Mrs. Pratiksha Prashant Shete.]
 R/o Valegaon Taluka Walwa.]
 District – Sangli.]
 2-C) Shri Bhausahab Paygonda Patil *[deleted]
 as per Court's order]*]
 2-D) Shri Suragonda Paygonda Patil]
 2-E) Shri Shivgonda Paygonda Patil]
 All residents of Hingangaon,]
 Taluka – Hatkanangale,]
 District – Kolhapur.]
 2-F) Sou. Suman Annaso Shetti]
 2-G) Smt. Madanabai Paygonda Patil]
 Both residents of Arag, Miraj,]
 District – Sangli.] **...Petitioners.**

Versus

1. Shri Manohar Adgonda Patil]
 Resident of Hingangaon,]

- Taluka – Hatkanangale,]
District – Kolhapur.]
2. Shri Babu Adgonda Patil]
since deceased by legal heirs:]
- 2A. Mahavir Babgonda Patil]
Age: 47 years, Occupation: Agriculture,]
R/o. Hingangav, Tal. - Hatkanangale.]
District – Kolhapur.]
- 2B. Ajit Babgonda Patil,]
Age: 42 years, Occupation: Agriculture,]
R/o. Hingangav, Taluka – Hatkanangale,]
District – Kolhapur.]
- 2C. Sau. Rajashree Manik Vadgave]
Age 45 years, Occ. Household,]
r/o. Rani Channamma Chowk,]
Eksambal, Taluka - Chikkodi,]
District – Belgave (Karnataka State).]
3. Shri Balgonda Adgonda Patil]
since deceased, by his heirs:-]
- 3A. Smt. Padmavati Balgonda Patil]
Resident of Hingangaon,]
Taluka Hatkanangale,]
District Kolhapur.]
- 3B. Dilip Balgonda Patil]
- 3C. Sou.Swati Mahesh Patil]
Both residents of Rangoli,]
Taluka Hatkanangale,]
District Kolhapur.]
- 3D. Pradeep Balgonda Patil]
Resident of Hingangaon,]
Taluka Hatkanangale,]
District Kolhapur.]
4. Shri Sukuma Adgonda Patil]
Since deceased by heirs :]
- 4a) Smt. Suvarna Sukuma Patil]
Age 55 years, Occupation – Household.]
- 4b) Swati Sukuma Patil]
Age 33 years, Occupation – Service.]
- 4c) Sapna Sukuma Patil]
Age 31 years, Occupation – Service.]
- 4d) Snehal Sukuma Patil]
Age 29 years, Occupation – Household]

- 4(a) to 4(d) residing at Flat B-43,
Shobha Park, Vrindavan Housing
Society, Opp. Guru Ganesh Gate No.2,
D.P. Road, Kothrud, Pune – 43.]
5. Smt. Ratnabai Adgonda Patil [*since deceased*
her heirs Respondent Nos. 1, 2, 3A to 3D, 4, 6 and 7
which is already on record.]]
6. Sou. Kusum Balu Desai]
Resident of Hingangaon, Taluka –]
Hatkanangale,]
District – Kolhapur.]
7. Sou. Neelabai Subhash Lodage]
Resident of Bhose, Taluka – Miraj,]
District -Sangli.]
8. The Member,]
Maharashtra Revenue Tribunal,]
Kolhapur.] **...Respondents.**

Mr. S. G. Karandikar i/b Mr. V. B. Rajure for the Petitioner.
Mr. Saurabh Railkar for Respondent.
Ms. Tanu Bhatia, AGP for Respondent-State.

Coram : Sharmila U. Deshmukh, J.
Reserved on : 21st November, 2024
Pronounced on : 14th December, 2024

Judgment :

1. Rule was issued on 27th October, 1999.
2. The present petition assails the order dated 31st October, 1998 passed by the Maharashtra Revenue Tribunal [for short, "**MRT**"] in Revision Application No. MRT-KP-68/95, originating from the order dated 15th December, 1994 passed by the Tenancy Aval Karkun in Case No.Hingangaon/85-A/38/91 E-38/91.
3. The proceedings arise from reference made by the Civil Court

under Section 85A of the Maharashtra Tenancy and Agricultural Lands Act, 1948 [for short, "***the Tenancy Act***"] referring the issue as regards the status of Respondent No 1 as tenant of suit property and consequently statutory purchaser.

4. Upon reference, the Tenancy Aval Karkun recorded the evidence of the parties and answered the issue in the affirmative holding that Respondent No.1 had proved that he was a tenant in the suit land and had become the statutory purchaser under Section 32-O of the Tenancy Act, 1948. As against this, the Petitioner filed Tenancy Appeal No.6 of 1995 along with RTS Appeal before the Assistant Collector and vide judgment and order dated 19th May, 1995, the Assistant Collector set aside the order of the Tenancy Aval Karkun.

5. The revisional powers of the Maharashtra Revenue Tribunal were invoked by Respondent No.1 and by the impugned judgment dated 31st October, 1998, the revision application came to be allowed.

6. Heard Mr. Karandikar for the Petitioner and Mr. Railkar for the Respondent.

7. Mr. Karandikar would submit that Ramgonda Patil was admittedly the owner of the subject land and had filed Special Civil Suit No.208 of 1974 seeking recovery of possession from the defendants therein which included the present Respondent No.1 as Defendant No.3. He submits that the Respondent No.1 raised

contradictory defense in his written statement claiming ownership rights on the basis of the Will executed by the Plaintiff and also claimed tenancy rights on the basis of Kabulayat claimed to have been executed on 20th January, 1970 and consequently right to purchase the land under Section 32O of Tenancy Act.

8. Mr. Karandikar has taken this Court through the evidence and would submit that the scribe of kabulayat has admitted that the scribe had gone to Sangli on 19th January, 1970, that the document has been scribed on the instruction of one Advocate Ashtekar and Respondent No.1, that two documents were prepared, that Respondent No.1 had brought the signatures of Ramgonda on blank paper and according to the signature of Ramgonda the contents were adjusted, that he had inquired with Manohar as regards the blank paper to which Manohar had replied that the lease was for period of 11 months, that Devgonda and Bhau Bala Kagal were not present and on next day Keli Bhau and Bala Kagal had not signed in his presence.

9. He would further point out the cross-examination of Respondent No 1 admitting that 3-4 years prior to 1970, he was a tenant in respect of the said property. He submits that the inconsistency about handing over possession is demonstrated as it is contended that the possession had been handed over upon execution of Kabulayat. He would further point out that Respondent No.1 has admitted that the rent of

Rs.1,000/- has not been mentioned in the Kabulayat and that as Ramgonda was his paternal uncle, no rent receipts were issued. He submits despite the admission, the Tenancy Court has recorded a finding of rent agreed at Rs 1,000/. He would further point out that the case of the Respondent No.1 was of contractual tenancy, while the order of Aval Karkun is of deemed tenancy.

10. He would further submit that the witness to the document- Devgonda has deposed that the document was scribed as instructed by Ramgonda Patil, that Ramgonda, the scribe, Manohar and Bhau Kagal were present, that Ramgonda signed Kabulayat in his presence and that Bhau Kagal signed the kabulayat. He submits that the evidence of the scribe and witness of the kabulayat are contradictory and cannot be believed.

11. He has taken this Court through the findings of Assistant Collector and would submit that the authenticity of kabulayat was required to be considered which has not been done. He would further submit that based on the Will and an alleged application of Ramgonda Patil, the name of the Respondent No.1 was entered by the Consolidation Officer as owner, and the Mutation entry on the basis of Kabulayat was recorded in the year 1994 whereas the Special Civil Suit was preferred in the year 1974 itself. He submits that the Kabulayat was pressed into service by Respondent No.1 after becoming aware

that the claim of the ownership based on the Consolidation Officer's order may not stand scrutiny.

12. He would further point out that MRT has misdirected itself by holding that the deceased Ramgonda was having intimate relationship with Respondent No.1 and that he desired the property to go to Respondent No.1 and therefore the Kabulayat was executed on 20th January, 1970, Will was executed on 19th February, 1970 and also the application was made before the Consolidation Officer to transfer the property. He submits that Ramgonda was not examined in the proceedings as he had died during the pendency of the suit and therefore, the findings which are based only upon the reading of the document are unsustainable as the contents do not make out any such case. He would further point out that once the MRT arrived at a finding of the signatures being obtained on blank paper and matter scribed subsequently, the execution of the Lease Deed is doubtful. He submits that the suit was filed in the year 1976 and the Will was revoked in the year 1974 whereas the mutation entry based on the Kabulayat was effected in the year 1993 without notice. He would further submit that there is no evidence that the Kabulayat was acted upon by the parties. He relies upon the decision in the case of ***Dwarakanath Vishram Ghurye since deceased by heirs Ashok Dwarkanath Ghurye and***

Another vs. Narayan Vasudeo Dhond¹, which holds that if a person pleads contractual tenancy and fails to prove the same, he cannot turn around and contend that if not contractual tenancy at least a deemed tenancy under Section 4 of the Tenancy Act should be held.

13. He would further tender the copy of the Kabulayat and would point out that there was no stipulation about rent and it is evident that the date of 20th January, 1970 is clearly adjusted.

14. *Per contra* Mr. Railkar, would submit that Ramgonda had no issues and therefore, executed the Kabulayat and the Will in favor of Respondent No. 1. He submits that the fact of execution of Kabulayat has been noted in the statement given to the Consolidation Officer and tenders a copy of the said statement. He points out that the said statement was given on 20th July, 1970 to the Consolidation Officer which shows that it was a desire of Ramgonda that the property should be given to Respondent No.1. He submits that by Public Notice subsequently the Will was revoked and not the Lease Deed, and therefore, the claim for tenancy has been made. He submits that evidence on record establishes the execution of the Lease Deed and that he is claiming contractual tenancy and not deemed tenancy.

15. In rejoinder, Mr. Karandikar would submit that the Consolidation Officer on the basis of the Vardi Application declared Respondent No.

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1 as an owner till the year 1993 and thereafter, Respondent No.1 claims tenancy by effecting the mutation entry. He submits that if he claims ownership then he has to give up the defense of being a tenant. He would further submit that no witness was confronted with the statement of 20th July, 1970 and therefore, it appears that two blank documents on which the signature of Ramgonda was obtained, one was used for the purpose of writing Kabulayat and the other was used for the purpose of making the statement.

16. Rival contentions now fall for determination.

17. The issue arising for consideration whether the status of Respondent No.1 as tenant has been established before the Tenancy Court in the reference.

18. Special Civil Suit No.208 of 1974 was filed by Ramgonda Patil seeking recovery of possession of the subject property. In the written statement, the Respondent No.1 claims tenancy on basis of Kabulayat dated 20th January, 1970 and at the same time refers to the 7/12 extracts and consolidation proceedings to claim ownership. The Assistant Collector while setting aside the order of Aval Karkun has noted the fact that the ownership and tenancy cannot be claimed at the same time.

19. Be that as it may. Ignoring the claim of ownership, the status of Respondent No.1 as tenant was the issue. It is accepted by Mr. Railkar

that there is no claim for deemed tenancy under Section 4 of Tenancy Act and claim is of contractual tenancy. The burden was upon the Respondent No.1 to prove the authenticity of Lease Deed and the creation of landlord tenant relationship.

20. The Tenancy Court had held that the 7/12 extracts shows name of Respondent No.1 which entries have not been cancelled. Upon consideration of Section 4 of Tenancy Act in context of lawful cultivation, the Tenancy Court held that the kabulayat is valid document unless set aside by the Competent Court. The Tenancy Aval Karkun held that the rent of Rs.1,000/- was being paid by the Respondent No.3 in the absence of any such deposition by Respondent No.1.

21. The findings of Tenancy Aval Karkun suffers from perversity as the evidence was not properly appreciated. The scribe -Baburao Nana Lohar has deposed about the absence of Ramgonda and signatures being brought on blank papers by Respondent No.1. He has also deposed that instructions were given by Advocate and Respondent No. 1 and that Devgonda and Bhau Bala Kagal were not present at that time. Whereas the witness Devgonda has deposed that the document was scribed by Babu Nana Lohar on instruction of Ramgonda, that at that time Ramgonda, the scribe, Respondent No.1, Bhau Bala Kagal and he were present. Devgonda has further deposed that Ramgonda

signed in his presence and then the witnesses signed.

22. Perusal of the evidence would disclose that there are contradictions in the evidence of the witness about the presence of Ramgonda, the signature of Ramgonda on the Kabulayat and the presence of witnesses to the document thereby creating a doubt about authenticity of the Kabulayat. The Tenancy Aval Karkun failed to appreciate the evidence in its proper perspective and also committed an error in law by considering the provisions of Section 4 pertaining to deemed tenancy while the case put forth was of contractual tenancy.

23. The Additional Collector has thereafter, re-appreciated the evidence and has held that the Tenancy Aval Karkun has decided in favor of the Respondent No.1 on the basis of proof of his possession on the basis of entries in 7/12 extracts whereas the main issue is as regards the lawful cultivation for which the Kabulayat was required to be proved. The Collector had rightly re-appreciated the evidence and held that the tenancy has not been proved and the possession is fraudulent which cannot be termed as lawful.

24. The learned Member of MRT was exercising revisional powers under Section 76 of Tenancy Act, which are to be exercised where (a) the order of Collector is contrary to law, or (b) that the Collector has failed to determine the material issue of law or (c) that there is substantial defect in following the procedure provided by the Act

which has resulted in miscarriage of justice. In exercise of revisional power, the evidence could not have been re-appreciated by learned Member of MRT.

25. Apart from the above, the findings of the MRT are clearly unsustainable in light of the evidence on record. The Learned Member of MRT has considered the documents on record and has come to a finding that the deceased Ramgonda was having intimate relationship with Revision Applicant and therefore, the Kabulayat and the Will came to be executed. The learned Member of MRT though accepted that the signature of Ramgonda was obtained on blank paper and the matter was scribed over it subsequently, has thereafter, held that the Kabulayat was executed willingly and knowingly and that the witness has admitted that he was present when the document was scribed. The said finding ignores the deposition of the scribe that neither Ramgonda nor the witness was present at the time of execution of Kabulayat.

26. The learned Member of MRT has ascribed meaning to the relationship between the parties by interpreting the documents, i.e. the Kabulayat and the Will, without any such deposition being on record. The learned Member of MRT failed to notice that even if it is accepted that Kabulayat was executed by the Ramgonda in favor of Respondent No.1, it was necessary to show that creation of tenancy by

bringing on record the rent receipts, etc. The learned Member of the MRT as well as the Tenancy Aval Karkun appears to be swayed by the fact that in 7/12 extracts, the name of Respondent No.1 appears from the year 1970 till the year 1974 and he is in possession throughout. The suit was filed for recovery of possession and it is not disputed that Respondent No.1 was in possession, however, possession alone cannot confer tenancy without lawful cultivation being proved.

27. The evidence on record does not inspire confidence as regards the execution of the Lease Deed and therefore, the Assistant Collector has rightly appreciated the evidence on record and has held that the status of tenancy was not proved. The reliance placed by Mr. Railkar on the application dated 20th July, 1970 before the Consolidation Officer is termed by him as a statement by Ramgonda. However, perusal of the said document would indicate that the same was an application made before the Settlement Commissioner under the signature of Ramgonda. Unless the document is proved to be a statement/Application filed by Ramgonda Patil, the Application cannot be considered as proof of execution of Kabulayat. Going a step further, even if it is accepted that the application was made by Ramgonda Patil in which he admits the execution of lease, it needs to be proved that the lease was acted upon and that the relationship of landlord-tenant came into existence which has not been established in the present

case. The order of learned Member of MRT, therefore, suffers from infirmity and is liable to be quashed and set aside.

28. In light of the discussion above, the impugned judgement and order dated 31st October, 1998 passed by the learned Member of the Maharashtra Revenue Tribunal in Revision No MRT-KP-68/95 and of the Tenancy Aval Karkun dated 15th December, 1994 in Case No TNC Hingangaon 85-A-38/91 are hereby quashed and set aside. Consequently, the order of Assistant Collector dated 19th May, 1995 in Tenancy Appeal No. 6/95 is revived.

29. Petition is allowed. Rule is made absolute.

[Sharmila U. Deshmukh, J.]

30. At this stage, request is made for stay of the judgment. The judgment is stayed for a period of six weeks from today.

[Sharmila U. Deshmukh, J.]