

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14313 OF 2024**

Agatrao Keshav Pawar
Age-74, Occ. Agri. R/O Ugedewadi,
Tal. Malshiras, Dist: Solapur

..Petitioner/Orig. Plaintiff

Versus

1. The Brahan Maharashtra
Sugar Syndicate Limited through
Power of Attorney
Dilip Bapusaheb Deshmukh
Age 64, Years. Occ. Agri. R/o Shripur,
Tal. Malshiras, Dist- Solapur
2. The Brahan Maharashtra Sugar
Syndicate Limited
Through Assistant General Manager
Umesh Vasantrao Joshi
Age 62. Years. Occ. Agri. R/o Shripur,
Tal-Malshiras, Dist- Solapur
3. Shivaji Vijaysinha Mohite
Age 60. Years. Occ. Agri. R/o Tanu,
Tal-Indapur, Dist-Pune ..Respondents/Orig. Defendants

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Mr. B. A. Lawate, for the Petitioner.
Mr. Kalpesh U. Patil, for Respondent Nos.1 and 2.
Mr. Rushabh D. Phade, for Respondent No.3.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 11th NOVEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioner/original plaintiff in Special Civil Suit No.08/2016 pending before Civil Judge Senior Division, Malshiras

takes exception to order dated 08.05.2024 passed below Exhibit-183, thereby allowing application filed by respondent no.3 for framing additional issue as to tenancy and referring same to Tenancy Court under provision of Bombay Tenancy and Agriculture Act (for short 'BT & AL Act').

3. The petitioner instituted Special Civil Suit No.08/2016 before Civil Judge Senior Division, Malshiras seeking declaration and injunction in respect of suit property bearing Gut No.165 situated at village Bondale, Tal. Malshiras. It is contention of plaintiff that he is in possession of suit property as tenant since 1964-65. The defendant no.1 has admitted that plaintiff is tenant and offered to purchase land. According to plaintiff, defendant no.1 secretly executed sale deed dated 15.07.2015 in favour of defendant no.3. Since plaintiff is in possession of suit property, sale deed executed by defendant nos.1 and 2 in favor of defendant no.3 is invalid.

4. The defendants refuted plaintiff's claim contending that suit land was given on lease for cultivation of sugarcane. As per Notification dated 08.02.1978, tenant who was in possession was required to apply for purchase of property within period of one year. The plaintiff has surrendered his right and given no objection to execute sale deed in favour of Shivaji Kadam.

5. The defendant no.3 filed application Exhibit-183 contending that looking to the pleading and prayer in plaint, it is necessary to frame additional issue as to whether Civil Court has jurisdiction to entertain suit and whether suit is barred in view of Section 85 of BT & AL Act. The plaintiff opposed application by filing his reply.

6. The Trial Court after considering rival submissions, framed issue as to “whether plaintiff prove that he is tenant of suit property” and directed to refer same to Tenancy Court.

7. Mr. Lawate, learned Advocate appearing for petitioner submits that documentary evidence on record and pleadings in previous litigation between parties would show that there is no dispute that plaintiff is in occupation of suit property as tenant. The plaintiff has, therefore, filed suit seeking declaration that sale deed dated 15.07.2015 executed by defendant nos.1 and 2 in favour of defendant no.3 being invalid and does not confer any right upon them and consequential injunction. In that view of matter, issue of tenancy or its reference under Section 85 of BT & AL Act was unwarranted.

8. Mr. Kalpesh Patil, learned Advocate appearing for respondent nos.1 and 2 and Mr. Rushabh Phade, learned Advocate appearing for respondent no.3 supports impugned order. According to them, plaintiff asserts his tenancy right over suit property and seeks declaration against sale deed executed in favour of defendant no.3.

In that view of matter, Trial Court is justified in making reference of issue as to tenancy in terms of Section 85 of BT & AL Act.

9. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that plaintiff has specifically pleaded that he is tenant in suit property and continues to be in possession. Similarly, he claims relief that sale deed executed in favour of defendant no.3 is invalid and inconsequential in light of tenancy right of plaintiff. On other hand, defendants took stand in written statement that plaintiff had waived right of tenancy or plaintiff has lost tenancy right in view of operation of law.

10. In light of pleading of parties, it is apparent that, plaintiff is seeking declaration of his tenancy right over suit property. Eventually, assails validity of sale deed executed by defendant nos.1 and 2 in favour of defendant no.3. The Trial Court has also given reference to previous litigation between parties, particularly Tenancy Case bearing No.13/2010 instituted by plaintiff against defendant no.1 as well as RTS Appeal No.45/2016 instituted by plaintiff before Sub Divisional Officer against defendant no.3 and after analyzing orders passed by Revenue Authorities observed that there is no concrete material on record to accept existence of tenancy right of plaintiff. The Trial Court has also observed that admission of defendant nos.1 and 2 itself would not be sufficient to establish tenancy right of plaintiff,

particularly in light of observations in judgments in RTS Appeal No.45/2016 and 347/2017.

11. In that view of matter, when plaintiff asserts his tenancy right over suit property and seeks to challenge sale deed executed in favour of defendant no.3 being hit by Section 68(8) of BT & AL Act, it is necessary that Competent Authority under Tenancy Act decides existence of tenancy right of plaintiff. The jurisdiction of Civil Court would be barred in such case. It is only Competent Authority under BT & AL Act can rule upon, if plaintiff is tenant or he has surrendered tenancy as contended by defendants.

12. In that view of matter, Trial Court is justified in framing issue and making reference to Competent Authority under Section 85 of BT & AL Act. In result, no jurisdictional error is brought to notice of this Court requiring interference under Article 227 of Constitution of India. Hence, Writ Petition stands dismissed.

13. Rule made absolute in above terms.

(S.G. CHAPALGAONKAR, J.)