



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.115/2024

Abhijeet Sheshrao Patil (Hage),
aged about 41 Yrs., Occ. Agriculturist,
R/o Adarsha Colony, Hirabai Plot,
Akola, Tq. & Distt. Akola.

... Petitioner
(Original Defendant No.D-3)

- Versus -

1. Smt. Gayabai Wd/o Rambhau Patil (Hage),
(deceased), R/o Sukali (Mhaispur),
Tq. Barshitakli, Distt. Akola.
2. Sau. Suman W/o Shankarrao Patil (Kale),
aged about 67 Yrs., Occ. Agriculturist,
R/o Flat No.9, Tale Apartment No.6,
Sawantwadi, Ranpisenagar,
Akola 444 001. (Original Plaintiff Nos.1 & 2)
3. Ranjeet Sheshrao Patil (Hage),
aged about 43 Yrs., Occ. Agriculturist,
R/o Sukali (Mhaispur),
Tq. Barshitakli, Distt. Akola. (Original Defendant No.2)
4. Sheshrao S/o Ramkrishna Patil (Hage),
(deceased), Occ. Agriculturist,
R/o Sukali (Mhaispur),
Tq. Barshitakli, Distt. Akola.

through L.Rs.

R-1. Smt. Chitra Sheshrao Patil (Hage),
aged about 61 Yrs., Occ. Housewife.

R-2. Ku. Sweta Sheshrao Patil (Hage),
aged about 37 Yrs., Occ. Agriculturist.

Both R/o Adarsha Colony, Hirabai Plot,
Tq. & Distt. Akola. (Original Defendant No.D-1 & D-4)
... Respondents

Mr. H.R. Gadhia, Advocate for the petitioner.
Mr. K.S. Chiwarkar, Advocate for respondent No.2.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT: 10.6.2025.
DATE OF PRONOUNCING THE JUDGMENT: 13.6.2025.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocates for the parties.

2. The challenge in this petition is to the order dated
26.10.2023 passed by the Civil Judge, Junior Division, Barshitakli
below Exh.191 in Regular Civil Suit No.36/2005 thereby
rejecting the application filed by the petitioner for staying the suit
and referring the issue of tenancy of defendants for determination

by competent authority under Sections 124 and 125 of the Maharashtra Tenancy and Agricultural Lands Act, 1958.

3. The petitioner herein is the original defendant No.3 in the civil suit. The suit was filed for declaration, permanent injunction and possession in respect of the land bearing Gat Nos.109, 155 and 127 situated at Mouja Sukali (Mhaispur), Tah. Barshitakli, District Akola.

4. The respondent No.3 has filed the written statement claiming tenancy of petitioner over the suit properties and claiming existence of oral agreement to sell the suit properties in his name by the respondents. Before commencement of trial the defendant i.e. petitioner moved an application at Exh.154 for recasting of issue No.3. The trial Court by order dated 4.2.2016 rejected the said application. The said order was challenged before this Court in Writ Petition No.3251/2016 and in said petition on 11.10.2018 this Court has passed the order and

remitted the matter back to the trial Court for consideration of application at Exh.154 and for passing fresh order after hearing both the parties.

5. On 13.10.2022 the trial Court recast issue No.3 in the suit as under:-

“Do the defendants prove that they are holding possession of field Gat Nos.109, 155 and 127 of village Sukali as tenant?”

6. After framing of this issue the petitioner/defendant No.3 has filed an application at Exh.191 for staying the suit and referring the issue of tenancy of defendants for determination by the competent authority under Sections 124 and 125 of the Maharashtra Tenancy and Agricultural Lands Act, 1958.

7. The respondent Nos.1 and 2 resisted the application stating that there is no need to refer the matter as there is no express bar on civil Court to decide the issue of tenancy. The trial

Court Barshitakli rejected the application filed by the petitioner for staying the suit and referring the issue of tenancy for determination by the competent authority.

8. Learned Advocate for the petitioner has submitted that the application was rejected on the ground that similar application was already rejected by the trial Court in civil suit on 22.2.1996. The suit regarding same relief is not maintainable as it will be hit by the principle of res judicata. Another ground was that by relying on the judgment of Potu Bhawani V/s. Udhao Vithoba Khade reported in **1963 Mh.L.J.563** the Court has observed that the said issue can be determined and the civil Court has jurisdiction, which is not totally excluded. It is also submitted by the learned Advocate for the petitioner that the respondents have not pointed out the earlier litigation and the orders passed by this Court and the Hon'ble Apex Court wherein the Hon'ble Apex Court has observed that the issue relating to the tenancy will be considered on its own merits and in accordance

with law. The order passed by this Court on 20.3.2023 in Writ Petition No.1706/2023 is also not pointed out by the respondents before the trial Court while deciding the application (Exh.191). Hence it is prayed to dismiss the petition.

9. The learned Advocate for the respondents has filed the reply and opposed the petition stating that the issue is already decided by this Court. The suit is pending since 1995. The petitioner is prolonging the matter by filing such applications at belated stage. Once the issue is already decided, the application which is filed by the petitioner at Exh.191, is not maintainable.

10. He has further argued that the petitioner has relied on the order passed by this Court in Writ Petition No.3251/2016 on 13.6.2016 wherein the petitioner himself has shown his willingness to deposit Rs.25,000/- per year before the trial Court till the disposal of the civil suit but after disposal of said petition the petitioner has not deposited the amount before the trial

Court. As the issue is already decided by the trial Court he has prayed to reject the application.

11. Heard both sides and perused the record.

12. On perusal of record it appears that the petitioner has suppressed the earlier litigation filed by the respondents. The orders passed by this Court and the Hon'ble Apex Court are not disclosed by the respondents when the order below Exh.191 was passed by the trial Court. The petitioner was not aware about the said order passed by this Court in Writ Petition No.1706/2023 and by the Hon'ble Apex Court as the petitioner was not the party to the said proceedings.

13. After going through the said orders, it reveals that the issue of tenancy is already reflected in written statement filed by the petitioner/defendant and specific averments are there about

the status of the defendants as tenant as per the tenancy created by plaintiff No.2.

14. The petitioner has relied on the judgment in support of his argument that he has not continued to deposit the amount before the trial Court. On disposal of petition, the interim order merges in final order. In view of it, this Court has observed in Writ Petition No.3251/2016 that the plea of tenancy is neither vague nor *mala fide*.

15. The Hon'ble Apex Court has directed in its order to consider the issue relating to the tenancy. These orders are suppressed by the respondents before the trial Court when the trial Court has passed the order below Exh.156 on 13.10.2022. There is no question of *res judicata* as in 1995 the application was filed under Section 9A of the Code of Civil Procedure, however, at that time the issue about tenancy was not framed and it was not decided. The application was rejected without framing the issues.

Therefore, principle of *res judicata* will not be attracted in this case.

16. The petitioner has relied on the observations of the Hon'ble Apex Court in case of National Bal Bhawan and another V/s. Union of India and others reported in (2003) 9 SCC 671

which are as under:-

“4. It is no longer res integra that once a writ petition is finally disposed of by the High Court, any interim order passed in pending writ petition merges with the final order. If the respondents were aggrieved by the interim order in terms of which the writ petition was disposed of, it was incumbent upon the respondents either to have amended the memo of appeal by challenging the final order passed by the Single Judge of the High Court or ought to have preferred fresh letters patent appeal against the final order passed by the Single Judge. In that view of the matter, the orders under challenge are set aside. However, we permit respondents 1 and 2 herein to move an application for amendment of the memo of appeal by challenging the final order passed by the Single Judge of the High Court. In case such an application is filed, the High Court shall condone the delay in filing the amendment application. The appeal may be decided expeditiously. We may clarify that we have not expressed any opinion on the merits of the matter.”

17. While rejecting the application the trial Court has also placed reliance on the judgment of Potu Bhawani (supra) in which it is observed that the civil Court is not totally barred. In para 4 of said judgment the Hon'ble Apex Court has also observed as follows:-

“.....Unless, therefore, it is possible to uphold the contention that the exclusive jurisdiction of the Tenancy Court embraced other variety of questions relating to the status of a tenant claimed by any person, whether the claim is put forward as against the landlord or otherwise, we shall be unduly enlarging the ambit of exclusion. In my opinion, the scheme of the Act does not warrant such a conclusion. So far as Clauses (3) to (19) of Section 100 are concerned, it could definitely be said that most of the questions required to be determined by the Tahsildar under these clauses are questions between a landlord and tenant. It is difficult to hold, therefore, that the question whether a person is an agriculturist under Clause (1) or the question whether a person is a tenant, a protected lessee or an occupancy tenant under Clause (2) is a general question to be decided at large without reference to the landlord or even in his absence. In my opinion, a more appropriate construction of the section would be that even in respect of decision of such question as to the status of a person claiming to be a tenant, a protected lessee or an occupancy tenant, or claiming to be an agriculturist, it must have reference in the context of the claim against a landlord. It is only to that extent that the jurisdiction of the civil Court is

barred and reference is required to be made to the Tenancy Court.”

18. In case in hand the issue is framed to decide that the petitioner is a tenant then the reference is required to be made to the tenancy Court.

19. In para 15 of Hansu Dhondba Uike and another V/s. Sahebrao Chintaman Salam and another reported in **2014 (4)**

Mh.L.J. 240 this Court has observed as under:-

“This issue, under Section 125 of the Tenancy Act, is required to be settled and decided by the Competent Authority and the Civil Court would have no jurisdiction to decide the same and till the time it is settled and decided, the suit would have to be stayed by the Civil Court. But, before giving any finding as to whether or not this issue ought to be framed and referred to the Competent Authority by the Civil Court, it would be necessary for this Court to consider whether the issue, being in the nature of alternative plea, could be raised at all by the respondents in the facts and circumstances of this case.”

20. Though the order passed by this Court in Writ Petition No.1706/2023 is of 20.3.2023 and order passed by the Hon'ble Apex Court in Special Leave to Appeal (C) No.9312/2023 is of 15.5.2023, the respondents have not brought them to the notice of the trial Court while passing the impugned order which shows that the respondents have not proceeded with clean hands. Issue of tenancy is required to be decided first by competent authority. In view of the above-said observations, the application (Exh.191) is allowed. The impugned order passed by the trial Court is quashed and set aside.

(i) The trial Court is directed to refer the issue of tenancy of defendants for determination by the competent authority under Sections 124 and 125 of the Maharashtra Tenancy and Agricultural Lands Act, 1958.

(ii) The civil suit is stayed during the pendency of the proceedings before the Mamlatdar's Court i.e. Tahsildar.

(iii) The competent authority i.e. Tahsildar shall make an endeavour to decide the tenancy as early as possible and in any

case, within a period of three months from the date of receipt of this order.

(iv) The civil Court shall dispose of the civil suit within a period of six months after receipt of the decision regarding determination of tenancy from the competent authority.

21. Rule is made absolute in the above terms. There shall be no orders as to costs.

(MRS.VRUSHALI V. JOSHI, J.)