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Court : Mumbai Aurangabad

Decided On : Nov-27-2014

Judge : Ravindra V. Ghuge

Appeal No. : Writ Petition No. 2007 of 1991

Appellant : Parvatibai and Others

Respondent : Hareshwar and Another

Judgement :

Oral Judgment:

1. This petition was admitted by order dated 26.7.1991 and interim relief was granted to the petitioners in terms of prayer clause C-1 which reads as under:-

Pending hearing and final disposal this writ Petition, the Judgment and order dated 26.6.1986 passed by learned President, Agricultural Land Tribunal Taluka Udgir in Case No.84/TNC/O/2 which is confirmed by Deputy Collector, Latur and Maharashtra Revenue Tribunal at Aurangabad on 6.4.1987, 16.6.1990 respectively may be stayed.

2. The submissions of Shri Chincholkar, learned Advocate for the petitioners with regard to the Civil Proceedings as well as Revenue proceedings are as under:-

A. DETAILS REGARDING REVENUE PROCEEDINGS :

(a) The petitioners are the legal representatives of Maharudrappa Baslingappa Swami.

(b) Maharudrappa Baslingappa Swami purchased land from Limbabai w/o Gurlingappa Swami by registered sale deed dated 15.10.1968.

(c) The land purchased by Maharudrappa Baslingappa Swami falls in Survey No.116-A admeasuring 9 Acres and 7 gunthas situated at Wadhone, Tq. Udgir, District Latur for a consideration of Rs.15,000/-.

(d) Maharudrappa Baslingappa Swami has sold two acres out of the said land to Dadarao Ramrao Ange.

(e) Dispute pertains only to the land admeasuring 7 acres and 7 gunthas.

(f) Possession of the land purchased was acquired by Maharudrappa Baslingappa Swami w.e.f. 15.10.1968.

(g) Deceased respondent Hareshwar Baslingappa Swami filed an application TNC/223/70 before the Tenancy Tahsildar on 16.7.1970.

(h) The same came to be decided on 30.6.1971 which was with regard to seeking a declaration that the sale deed in between Maharudrappa Baslingappa Swami and Dadarao Ramrao Ange in respect of land admeasuring 9 acres 7 gunthas out of Survey No.116-A is void.

(i) Hareshwar, the tenant was held to have shown his willingness to purchase the said land and therefore, he was given opportunity to apply for determining the reasonable price of the land as per provisions of Sec.38(2) of the Hyderabad Tenancy and Agricultural Lands Act (herein after referred to as Tenancy Act for the sake of brevity).

(j) The petitioners preferred an appeal before the Deputy Collector, Land Reforms (DCLR), Osmanabad bearing No.71/TNC/A/90/142.

(k) By Judgment and order dated 11.10.1979, the Appeal was allowed and the judgment dated 30.6.1971 was set aside and the matter was remanded to the

Tahsildar.

(l) Limbabai Gurlingayya died on 28.4.1972. Nirmalabai D/o Vaijinath filed an application seeking a declaration that she is the only legal heir of Limbabai.

(m) On 18.8.1973, Tahsildar rejected the application of Nirmalabai and the entire proceedings in case No.73/TNC/2/8-70 stood abated.

(n) Hareshwar Baslingappa Swami instituted case No.84/TNC-0/2 which was an application for issuing a sale certificate u/s 38(6) of the tenancy Act.

(o) The applicants in these proceedings Hareshwar and Dondayya who are real brothers prayed for ownership certificate u/s 38(6) of the Tenancy Act pertaining to the suit land on the basis that the Nayab Tahsildar had declared them tenants over the suit land by order dated 31.10.1969.

(p) Copy of the order dated 31.10.1969 which is titled as Tenancy certificate bearing Record No.224/R-169 is placed on record. Consent is granted by Limbabai Gurlingappa Swami in the written statement and the said consent has been attested by the Tahsildar on 16.7.1969.

(q) The petitioners fairly concede that the order dated 31.10.1969 is not challenged by any of the petitioners as they were not a party to the said proceedings.

(r) The typed copy of the Judgment dated 26.6.1986 of the Additional Tahsildar in case No.84/TNC/0/2 filed by Hareshwar and Dhondayya dated 27.7.1984 is placed on record.

(s) The petitioners challenged the said Judgment before the DCLR bearing 86/TNC/A-7/UDG on 26.8.1986.

(t) The Judgment and order dated 6.4.1987 delivered by the DCLR by which the appeal of the petitioners was rejected is also placed on record.

(u) The petitioner filed revision bearing No.28/B/89 before the Maharashtra Revenue Tribunal (MRT) which was also dismissed on 16.6.1990.

(v) The contention is that false and fabricated documents have been filed by the respondents, while obtaining favourable orders.

(w) Three different stands have been taken by the respondents at different levels in the litigation between the parties.

(x) The conclusions drawn by the three authorities below concurrently against the petitioners, are unsustainable.

(y) Doubtful documents have been placed on record before the Revenue authorities by the respondents, has been the conclusion of the Civil Court.

(z) The respondents are wrongfully in the possession of the property and they have also constructed their house on the said property.

(aa) Fact that Maharudrappa Baslingappa Swami has purchased suit land from Limbabai before any order was passed u/s 5 and 8 of the Tenancy Act has been overlooked.

B. DETAILS AS REGARDS CIVIL PROCEEDINGS :

(a) Maharudrappa Baslingappa Swami filed RCS No.150/1974 before the Civil Court for recovery of possession and since Maharudrappa Baslingappa Swami died during pendency of the proceedings, the legal heirs were brought on record.

(b) RCS No.150/1974 was decreed on 18.9.1980.

(c) The petitioners filed regular Darkhast No.57/80.

(d) The petitioners claim to have been put in possession on 17.1.1981 through the bailiff of the Civil Court.

(e) The respondents preferred three Regular Civil Appeals Nos. 77/80, 132/80 and 133/80 by which the Judgment and decree dated 18.9.1980 was challenged.

(f) On 17.11.1987 these three appeals were dismissed.

(g) The respondents preferred three second appeals Nos. 93/88, 94/88 and 307/93 which were disposed off by this Court by Judgment dated 9.9.2009.

(h) The Second Appeals were disposed of with the following observations made by this Court in paragraph Nos. 23, 24 and 25:-

23. In the circumstances, the plaintiffs in R.C.S.No.270 of 1981 are entitled to protection of injunction until defendant Nos. 1 and 2 - appellants obtain possession by way of restitution or otherwise by due process of law subject to decision in writ petition No.2007 of 1991. In case said writ petition is decided against original plaintiffs, they will not be entitled to declaration of title, but they would be entitled to continuation of possession of the suit property until they are dispossessed by due process of law and the appellants would not be entitled to dispossess the plaintiffs forcibly, by taking law in their own hands and to that extent the plaintiffs would be entitled to protection by way of injunction.

24. In the result, Second Appeal Nos. 93 of 1988 and 94 of 1988 are partly allowed. It is held that the plaintiffs are entitled to the declaration of ownership and to continue to be in possession of the suit land only in case it is held ultimately in proceedings under H.T. and A.L. Act (i.e. In writ petition No.2007 of 1991) that the original defendant Nos. 1 and 2 - appellants herein were not the tenants of the suit land and the decisions of the Additional Tahsildar as confirmed by the Deputy Collector in appeal and by M.R.T. In revision, are set aside. In case the original plaintiffs fail to succeed in said proceedings (i.e. In writ petition No.2007 of 1991), these second appeals stand allowed and original R.C.S.No.150 of 1974 shall stand dismissed and the present appellants - original defendant Nos. 1 and 2 in the said suit would be entitled to actual possession of the suit land as restitution under the provisions of Section 144 of the Code of Civil Procedure, 1908.

25. So far as Second Appeal No.307 of 1993 is concerned, the Judgment and decree of the trial Court in R.C.S.No.270 of 1981 as confirmed in R.C.A. No.58 of 1988 shall stand confirmed only in case original plaintiffs succeed in proceedings under H.T. and A.L. Act (i.e. I writ petition No.2007 of 1991) and the orders passed by Additional Tahsildar and A.L.T. As confirmed by the Deputy Collector in appeal and by M.R.T. In revision, are set aside and the appellants - defendant Nos. 1 and

2 are held to be not the tenants of the suit land. In case present appellants - defendant Nos. 1 and 2 succeed in proving that they are the tenants over the suit land then the decree passed in R.C.S.No.270 of 1981 as confirmed in R.C.A.No.58 of 1988 shall stand set aside and the suit shall stand dismissed with only rider that until dispossessed in due course of law, the plaintiffs would continue to have protection of their possessions by way of injunction.

3. Shri Chandole, learned advocate along with Shri Sakolkar have submitted as under:-

(a) The Tahsildar, Udgir. by order dated 31.10.1969 in record No.224/R169, has declared Hareshwar Baslingappa Swami as the tenant u/s 8 of the Tenancy Act.

(b) Limbabai had filed a Written statement dated 16.7.1969 wherein paragraphs Nos. 2, 4 and 5 are decisive in which she has admitted tenancy rights of Hareshwar u/s 5 and 8 of the Tenancy Act.

(c) Based on the consenting written statement of Limbabai, which was attested by the Tahsildar on 16.7.1969, Hareshwar Baslingappa was declared tenant of land Survey No.116-A of village Wadhavane Khurd to the extent of 9 acres, 9 gunthas.

Accordingly, a certificate was issued in favour of Hareshwar.

(d) This tenancy certificate and the order dated 31.10.1969, though within the knowledge of the petitioners, have not been challenged till today and therefore, the same have attained finality and cannot be called in question after a passage of almost 45 years.

(e) There was no challenge against the respondent Hareshwar before any authority as regards the relationship between Limbabai and Hareshwar.

(f) There was a written contract between Limbabai and Hareshwar as regards lease of the land.

(g) Hareshwar acquired the right to purchase the suit land u/s 38(6) of the Tenancy Act.

(h) The petitioners have not acquired any right in law to purchase the land from Limbabai since Hareshwar was held to be tenant over the suit land.

4. Having heard the learned advocates for respective parties, I have gone through the record and proceedings with their assistance.

5. Though the petitioners claim to have been put in possession by the bailiff of the Civil Court on 17.1.1981, it is not revealed from the record as to when have the petitioners been dispossessed from the said suit land. Per contra, the respondents claim to be in possession of the suit land since Hareshwar was declared a tenant from the year 1965. The tenancy certificate is dated 31.10.1969 which is issued in proceedings Record No.224/R 169 u/s 5 and 8 of the Act. The written statement filed by Limbabai mentions that the application of Hareshwar Baslingappa was u/s 5 and 8 of the tenancy Act.

6. In the Judgment dated 26.6.1986 delivered by the Additional Tahsildar, which was also known as Agricultural Lands Tribunal, Taluka : Udgir, indicates that the application for issuance of sale certificate u/s 38(B) of the Tenancy Act was decided. The issue as regards whether Hareshwar Basalingayya (Hareshwar Basalingappa) was a tenant of the suit land, was answered in the affirmative on the basis of the order dated 31.10.1969. The documents placed before the said Tribunal included the affidavit of Limbabai dated 29.4.1970 as well as the final order declaring Hareshwar as tenant dated 31.10.69.

7. From the above recorded facts and the record and proceedings before me, I find that the vital issue which forms the foundation of this entire tenancy proceeding is the final order dated 31.10.1969 passed u/s 8 of the Tenancy Act declaring Hareshwar as the tenant. This aspect becomes decisive since the petitioners herein have not challenged the said order as well as the certificate before any authority.

8. The contention that Hareshwar was the nephew of Limbabai was neither taken up as an issue before the Agricultural Lands Tribunal, nor before the DCLR, nor before the MRT and not even in this petition before this Court.

9. The ground stated by the petitioners as being the cause for not challenging the 31st October, 1969 Judgment u/s 8 of the Tenancy Act is that Maharudrappa S/o Baslingappa was not a party to the said proceedings. The said Judgment was placed before the Agricultural Lands Tribunal in case No.84/TNC/0/2. Even at that time, the petitioners became aware about the basis of the said application before the Tribunal for issuance of sale certificate u/s 38(8) of the Tenancy Act which was the said order dated 31.10.1969.

10. Even at that point of time, the petitioners could have questioned the said order and on the basis of which the certificate was issued. Contending today before this Court orally that the order dated 31.10.1969 could not have been passed since Hareshwar and Limbabai are inter-se related to each other and thereby attracting section 5(a) of the tenancy Act, does not convince me to take up the said issue after a passage of 45 years. Had the said issue been raised invoking section 5(a) of the tenancy Act to contend that Hareshwar could not have been deemed to be a tenant for being a member of the land holders family, it could have been gone into.

11. All the three impugned Judgments i.e. the Judgment dated 26.6.86 passed by the Agricultural Lands Tribunal, the Judgment of the DCLR dated 6.4.1987 and the Judgment of MRT dated 16.6.90, are all based upon the basic issue, which happens to be the foundation of thecase of the respondents viz. the final order dated 31.10.1969 declaring Hareshwar as a tenant.

12. The petitioners have strenuously contended that the Civil Court has arrived at certain observations as regards the shifting stands taken by the respondents as well as certain documents placed before the Revenue authority. In my view, it would be of no assistance to the petitioners since the whole issue turns upon the order dated 31.10.1969 passed u/s 8 of the Tenancy Act.

13. I, therefore, do not find that the entire litigation up to this date after a passage of 45 years, could be nullified and watered down in order to enable the petitioner an opportunity to challenge the final order dated 31.10.1969 passed u/s 8 of the Tenancy Act, for reasons more than one.

Firstly that the petitioners have by choice and their own volition, not challenged the order dated 31.10.1969 despite having gathered knowledge of the said order and the certificate before the Agricultural Lands Tribunal.

Secondly, the said order dated 31.10.1969 by passage of 45 years can be surely said to have attained finality.

Thirdly, the petitioners have not made out a case by which I could be convinced to permit them to reverse the clock of litigation over a period of 45 years so as to challenge the order dated 31.10.1969.

14. Detailed submissions have been canvassed by the petitioners at great length. In my view these lengthy submissions are rendered futile since the order dated 26.6.1986 issuing the purchase certificate u/s 38(6) of the Tenancy Act in favour of Hareshwar Baslingappa is primarily based upon order dated 31.10.1969 passed under section 8 of the Tenancy Act and which has not been challenged for 45 years.

15. Notwithstanding the above, a salient feature of this case is that the land lady Limbabai has entered into an agreement of Sale of the suit land for a consideration of Rs.5,000/- and through the written statement has prayed for issuance of purchase certificate. The two receipts as regards payment of purchase amount were also placed on record. Hareshwar being declared a tenant was another decisive factor since the order dated 31.10.1969 had become final. Section 38(6) of the Tenancy Act empowers the Tribunal to issue a purchase certificate to the tenant in possession. Since the tenant in possession has a preferential right to purchase the property, the claim of the petitioners was negated.

16. The Tribunal also concluded that the tenant Hareshwar had paid the purchase price to Limbabai and the holding of Hareshwar and his real brother did not exceed the area beyond one family holding after purchase of the suit land.

17. The findings of the Agricultural Lands Tribunal was upheld by the DCLR with a reasoned order. It was held that petitioner No.2s Hissa/share/portion in Survey

No.116 out of which Limbabai being original holder of the land sold 1/2 of the hissa during her life time. The remaining portion was 9 acres and 7 gunthas. Hareshwar and his brother Dondayya were tenants from 1965 on the basis of batai. The possession of the respondents from 1966-67 was established from the extracts of ROR.

18. During the life time of the land lady Limbabai, an agreement for purchase of the said land was made. An affidavit dated 29.4.70 which is questioned by the petitioner as being suspicious, was duly sworn and executed by Limbabai and was submitted to the Tahsildar, Udgir. The documents taken into consideration by the two lower authorities are proved documents, though questioned by the petitioners, herein. In the writ and supervisory jurisdiction of this Court, such proved facts and findings of facts by the authorities cannot be brushed aside on the basis of mere allegations by the petitioners, who, in the first place, have failed to challenge the order dated 31.10.69 whereby Hareshwar was declared a tenant u/s 8 of the Tenancy Act.

19. The revision petition filed by the petitioners before the MRT was dismissed on 16.6.1990. All aspects considered by the earlier two authorities were revisited by the MRT. It is observed that the order dated 31.10.69 passed by the Tribunal (Nayab Tahsildar Revenue) u/s 5 and 8 of the Tenancy Act have rendered the respondents eligible for purchasing the property under section 38-A of the Tenancy Act.

20. Even if it is assumed that Maharudrappa Gurlingayya had indeed purchased the property through the registered sale deed dated 15.10.68, the claim of the petitioners was held to be unsustainable in comparison to the legal right vested in Hareshwar u/s 38-A of the tenancy Act.

21. The Judgment of this Court in the three Second Appeals mentioned above needs reference. The contents of the paragraphs from the said Judgment dated 9.9.2009 indicate that this Court has concluded that the final claim would be decided in this writ petition and in the event the petitioner succeeds, they would be entitled to recover the possession from the respondents by following due procedure of law. It was also held that in the event this writ petition does not

uphold the claim of the petitioners, the Judgment delivered by the Civil Courts and the first appellate Court would stand set aside.

22. Shri Chincholkar, learned advocate for the petitioners has relied upon following judgments:-

a) Syed Ibrahim Syed Ashraf and Another V/s Zamarrudbi Nizamuddin and others reported in 1990(1) Mh.L.J. 631.

b) Anusayabai Ganpati Gaikwad, deceased through her heirs Krishna Ganpati Gaikwad and others V/s Baba Tatya Nikam since deceased through LRs Tolabai Baba Nikam and others 2003(4) Mh. L.J. 956.

23. The Syed Ibrahims case (supra) pertains to a member of the family claiming tenancy. Placing reliance upon the reported Judgment of Apex Court in case of S.N. Sudalaimuthu Chettiar V/s Palaniyandavan (AIR 1966 SC 469), the learned single Judge of this Court concluded that such a person therefore, would not be a deemed tenant u/s 5 of the Tenancy Act.

24. The judgment of the learned single Judge of this Court in the case of Anusayabai Ganpati Gaikwad (supra) also lays down law that a person lawfully cultivating any land belonging to another person would become deemed tenant if such land is not cultivated personally by the owner and if such person is not a member of the owner's family. The law clearly excludes a person, who is a member of the owners family, from being a deemed tenant in respect of such land though it may be under a lawful cultivation.

25. The Division bench of this Court in case of Gyandeo Duraji Pirange V/s Pandurang Jyoti Pirange 1994(2)Mh.L.J. 1174 has dealt with the issue of a tenancy created on the basis of an agreement between the land lady and the person claiming to be a tenant. Paragraphs Nos. 13, 14, 15, 16 and 17 of the said Judgment are of assistance and the same are being reproduced herein below:-

13. In Syed. Ashraf's case (cited supra), the dispute was as to whether the nephew of the landlord, where parties were Muslims, was entitled to claim that he was a tenant under the provisions of the Hyderabad Tenancy Act. In this case

also, there was a reference to the tenancy Court, to ascertain as to whether the nephew of the landlord were cultivating the land as tenants. It was observed that the cultivation by nephew will have to be accepted and treated as cultivation for and on behalf of uncle irrespective of the character of the jointness of the family, the parties were Muslims and obviously were not governed by the principles of Hindu Law. Again, in considering the application of the provisions of S. 5 of the said Act, reliance was placed on the decision of the Supreme Court, , Sudalaimuthu Chettiar v. Palaniyandavan to the effect that it is necessary to establish that someone is contributing his physical labour in the cultivation of land and that someone is a member of his family. In the said case, it is observed that a son-in-law can be regarded as a member of the family because the word "family" is not to be construed in a narrow sense or meaning, only a member of the Hindu Joint Family, because the Act applies to all tenants irrespective of the personal laws. It is observed that a person can be properly regarded as being a member of his wife's family and not merely of his father's family. This Court had also no document of lease before it and was considering the application of the provisions of S. 5 of the said Act where the parties were governed by the Muslim Law. It was held that there cannot be a claim in favour of the nephews for advantage of their occupation as a deemed tenancy.

14. In our judgment, the decisions in Nilavabai's case and Syd. Ashraf's case do not govern the situation. As already observed, the question that is required to be considered in this petition is the application of Section 4A of the said Act. This is because there is a written document of lease dated February 17, 1969. Section 4 A of the Act clearly enacts that the provisions of Chapter V dealing with lease under the Transfer of Property Act, 1882, shall apply insofar as the said provisions are not inconsistent with the provisions of Hyderabad Tenancy and Agricultural Lands Act, 1950, to tenancies and leases of land to which the Agricultural Tenancy Act applies. Under the Transfer of Property Act, a transfer means an act conveying property by a living person to another living person. Chapter V of the said Act defines a lease to be a transfer of a right to enjoy property in consideration of price paid or promised either in terms of money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferer by the transferee who accepts the transfer on such terms. What is

required to be considered is as to whether there is a property conveyed under the document for consideration. Consideration may be of a kind as defined in Section 105 of the Transfer of Property Act. It is essentially an agreement as in this petition there is a document dated February 17, 1969. In regard to this document, what is required to be considered is as to whether the said document is inconsistent with any of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950. If such an agreement is not inconsistent, then it would be a document valid in law creating relationship under the said document of lease.

15. Illustratively, but not exhaustively, occasions can be contemplated where-under in spite of relationship connecting the parties to the lease even to the extent of they being the members of a family either a continuing Hindu joint family or a separated one, there are factors and occasions which would necessitate on clear understanding the formation of such relationship. The landlord may be unable to exercise his rights of ownership either he being at a far distance from the land in question, or he being unable to do agricultural jobs by reasons of his old age, infirmity or difficulties of similar character. It cannot be ignored that the relationship is a basic factor for the genesis of an implicit faith and if for conveying property, a relation is chosen with full open eyes, it will have to be accepted for its legal consequences. It would be a transfer by the transferor in favour of the transferee. What is required to be considered is not the relationship but satisfaction of the conditions of the relationship as emerged in Section 105 of the Transfer of Property Act and a further satisfaction that such relationship is not inconsistent with the provisions of this Act. (emphasis supplied)

16. In reaching conclusions with regard to the above two aspects, examination of the document would be necessary and equally well, the examination of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950, would be equally necessary.

17. Before dealing with these two aspects, reference would be necessary to the decision in Kishan Naikwade's case (supra). In the said case, the plaintiff was a nephew of the owner of the land and claimed to be a tenant under an agreement of lease and for the said purpose, approached the Civil Court with a suit for

declaration and perpetual injunction. In the said suit, the issue regarding tenancy was referred under Section 99A of the Hyderabad Tenancy Act. There was written agreement of lease. The learned single Judge of this Court (Chapalgaonker, J.) has tursely observed that a near relation in possession of land cannot be deemed to be a tenant under the deeming provision of Section 5 of the Tenancy Act. He proceeded to observe that this does not, however, mean that if a nephew or a similar relative can in no circumstances enter into contract of tenancy with other relation. A person can claim to be a contractual tenant under an agreement of lease and this position will have to be considered not in the context of the provisions of Section 5 of the Tenancy Act, but independently thereof, depending on the nature of the document. Nilavabai's case as well as Syd. Ashrafs case are considered by the learned single Judge to reach conclusion that no tenancy can be spelt out under the provisions of Section 5 of the Hyderabad Tenancy Act.

26. By the said Judgment, the Division Bench considered the issue of an agreement being signed between the land lady and the person claiming to be a tenant upholding the view taken by the Single Judge in the case of Kishan Dashrath Naikwade V/s Asrabai w/o Babu Naikwade 1991(1) Mh.L.J.68 that a nephew or a similar relative can enter into contract of tenancy with another relative and can claim to be a contractual tenant under an agreement of lease. Such position in law will have to be considered not in the context of the provisions of sec.5 of the Tenancy Act, but independently thereof depending upon the nature of the documents. Those conclusions are therefore found in paragraph Nos. 18 to 22 of the said judgment of Gyandeo Duraji case (supra), which are reproduced herein below:-

18. The question of the document of agreement of lease not being inconsistent with any provisions of Hyderabad Tenancy Act is also considered by the learned single Judge, again to reach the conclusion that there is no provision of the Hyderabad Tenancy Act prohibiting the execution of an agreement of lease under the Transfer of Property Act.

19. The document in question is dated February 17, 1969. It is obtained by the present petitioner-defendant from Jyoti Pandurang Pirange. There is no dispute

that Jyoti is the owner of the land in question, which is specifically described in the document. By the document, the land is given on crop share basis. It is mentioned in the document that the expenses of cultivation which are specified therein, are to be undertaken by the petitioner-defendant at his expenses and the agricultural produce is to be shared equally between the parties. It is also specified that there is no objection to take steps regarding the entry of the name of the petitioner-defendant in the relevant record of rights as a tenant. The reason in the document is also mentioned and it is the old age of Jyoti Pirange resulting into inability to look after and cultivate the lands. It is added there that his wife is also old and it is, therefore, the document is executed by conveying the property in the land on equal crop share basis. The document is attested by witnesses and as stated hereinbefore the fact finding authorities have accepted the document as legally proved.

20. The provisions of the Hyderabad Tenancy and Agricultural Lands Act, will have to be scanned to find out as to whether there is any inconsistency. Chapter III of the said Act deals with the general provisions relating to tenants, beginning with Sections 4A and 5. The said Chapter provides for the powers and jurisdiction of the Tahsildar to decide questions whether a person is tenant and prescribes the quantum of rent, rights and liabilities in regard thereto, together with the provisions of termination of tenancy. Chapter IV deals with the recognition and legal rights of the tenants protected under the provisions of the Act. The Chapter deals with the persons who have already acquired the status of a tenant on a particular date as specified declaring them to be the protected tenants and thereafter deals with their rights and liabilities. Added Chapter IV-A recognises the right of protected tenants as well as ordinary tenants and other land-holders and provides for the procedure to be followed by the Agricultural Lands Tribunal in determining the price of the land to be paid by the tenants who are statutory purchasers of the land is question. The Chapter also provides for the mode of transfer of ownership and allied questions. Equally well, Chapter IV-B deals with the rights of the landlords or landholders in the event of the land being required by them for personal cultivation. There is also a provision in the Chapter IV-C in regard to the serving members of the Armed Forces in relation to agricultural lands, with reference to serving members of the Armed Forces either in their capacity as owners of the

lands or tenants in any capacity. Chapter V deals with restrictions on transfer to nonagriculturists. Chapter VI deals with the situations under noncultivation, improper cultivation or there being surplus land over the economic holding. Chapters VII and V11I are deleted.

Chapter IX provides for the procedural framework, powers of the tenancy authorities and appellate remedies. Chapter X deals with the offences under the Act, whereas the Chapter XI deals with miscellaneous statutory provisions. It is in this Chapter XI, there is a provision for summary eviction, Validation of alienations made before December 1, 1957, disposal of land where alienation is invalidated, ending with the provisions of Sections 99 and 99A. Section 99 bars the jurisdiction of the Civil Court to settle, decide or deal with any question that is required to be decided by the authorities under the said Act and Section 99A enacts the necessity of a reference. The perusal of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950, make it more than clear that there is no prohibition to enter into a document creating lease by the parties who are relations. Therefore, in our judgment, independently also, tenancy can be created and in regard to this, the provisions of Section 5 of the Tenancy Act will have to be ignored. As stated above, the issue that is referred to by the Civil Court to the tenancy Court is as follows :

"Whether the defendant proves that he is a tenant of the suit land by virtue of the sale deed on that date, i.e. 17-2- 1969?"

In the light of the above discussion, in our judgment, there is no hesitation to answer the same issue in favour of the petitioner-defendant. In this context, as discussed above, the decisions in Nilavabai's case and Syd. Ashraf's case do not govern the situation and need no disturbance. The decision in Kishan Naikwade's case takes the right view in law. The learned single Judge, however, has recast the issue. In the said case, the issue that was framed was as follows :-

"Whether the plaintiff proves that he was cultivating the suit land on the strength of this document entered with deceased Babu?" and the issue that is recasted is as follows:- "Whether the plaintiff proves that he is cultivating the suit land on the strength of agreement of tenancy entered into with deceased Babu?"

21. In this petition, as we have stated above, the issue is clearly framed in the proper perspective. It is not necessary to recast the same. In the light of the above reasoning, the issue will have to be answered and we answer accordingly in favour of the petitioner-defendant.

22. For the above reasons, the petition stands allowed. Rule is made absolute and the issue as-framed by the Civil Court is hereby ordered to be decided in favour of the petitionerdefendant. There shall be no order as to costs. Order accordingly.

27. In the instant case, there is an agreement between Limbabai and Hareshwar. It is also contended by the petitioners that Limbabai was very old and frail at the time of filing her written statement by which she gave her consent on an affidavit in the proceedings u/s 5 and 8 of the Tenancy Act. I am therefore not inclined to unsettle this factual position which has crystallized by passage of 45 years.

28. The Apex Court (five Judges Bench) in the matter of Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 has dealt with the writ and supervisory jurisdiction of this Court. Paragraph Nos. 7 and 8 of the said Judgment are of assistance and read as follows:-

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is

apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. SyedTrebuchet MS Ahmed Ishaque), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam ([1958] S.C.R. 1240.), and Kaushalya Devi v. Bachittar Singh.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of

certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of a the legal provision which is alleged to have been misconstrued or contravened.

29. The Apex Court had yet another occasion to deal with the supervisory and writ jurisdiction of this Court in the matter of Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682, wherein the Apex Court has once again defined the scope and jurisdiction of the supervisory powers of this Court in paragraph Nos. 38 (1 to 9) and 39, which read thus:-

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder :-

(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in

excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined

to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the

proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

30. I, therefore, conclude that the impugned order has not caused any injustice to the petitioners and cannot be termed as being erroneous or perverse.

31. In the light of the above, this writ petition is dismissed. Rule is discharged. No order as to costs.

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