

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.4382 OF 2014

DIGAMBER & ANR.

...APPELLANT(S)

VERSUS

KACHRU DEAD THR. LRS. & ORS.

...RESPONDENT(S)

J U D G M E N T

R. BANUMATHI, J.

1. This appeal arises out of the judgment dated 13.01.2005 passed by the High Court of Bombay at Aurangabad Bench in Writ Petition No.1389 of 1989 whereby the High Court held that the predecessors in title of the appellants namely Vasudeo and Chandu cannot take advantage of Section 5 of the Hyderabad Tenancy and Agricultural Lands Act, 1950.

2. Kisan Punde, predecessor in title of the respondents namely Vithal, Tukaram, Kachru and Madan (erstwhile respondents No.1 to 4) was the owner of the agricultural land. The suit land was owned by Kisan Punde/father of respondents No.1 to 4 herein and the land was mortgaged to one Vasudeorao for Rs.200/- in 1941 and which was further mortgaged to Chandu Narsingh Pardeshi/father of appellants in

the year 1942. Possession of the suit land was given to Vasudeorao who gave possession to the father of the appellants. Appellants are thus the mortgagees of the suit land admeasuring 29 acres and 4 gunthas situated at Dhondalgaon, Aurangabad and they are in possession since 1942 vide mortgage deed dated 25.02.1942. Chandu/father of appellants has alienated 5 acres of land to respondents Bakru s/o Rangnath and Sheelabai w/o Uttamrao Deshpande.

3. Aggrieved by such alienation, sons of Kisan namely Vithal, Tukaram, Kachru and Madan filed petition before the Additional Collector, Aurangabad for termination of the mortgage and restoration of possession under Section 10 of the Prevention of Agricultural Lands Alienation Act, 1939 read with Section 103 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The said application was allowed ex-parte on 27.07.1984. The said order was challenged before the Additional Commissioner. The Additional Commissioner in appeal remanded the case to the Additional Collector on 12.03.1986 with a direction to decide the matter afresh after giving opportunity of hearing to both the parties.

4. The Additional Collector after consideration of evidence placed before him, by order dated 14.05.1988, recorded a finding that respondents No.1 to 4 – sons of Kisan are entitled to have possession of the suit property as per Section 10 of the 1939 Act and allowed the

application filed by sons of Kisan. Revision filed by the appellants before Additional Commissioner was dismissed vide order dated 30.03.1989 confirming the order of the Additional Collector.

5. Aggrieved by the order of Additional Commissioner, appellants filed the writ petition. The said Writ Petition No.1389 of 1989 filed by the appellants before the High Court was dismissed vide impugned order dated 13.01.2005 holding that the proceedings initiated by the sons of Kisan namely Vithal, Tukaram, Kachru and Madan is maintainable. The High Court held that Section 5 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 excludes the mortgagee in possession to be termed as "deemed tenant". Aggrieved by the above order, appellants have preferred this appeal. Respondents No.1, 2 and 6 were deleted from the array of parties at the risk of the appellants vide order of this Court dated 23.08.2011.

6. We have heard learned counsel appearing on behalf of the parties and perused the materials on record.

7. Mr. Babasaheb Govindrao Kale representing the purchasers (respondents No.1 to 9) and Mr. Devidaas Madan Punde for original owner (representing respondents No. 10 to 17) are personally present in the Court.

8. During the course of hearing, all parties concerned have negotiated the matter and have amicably settled the matter. The various

parties who are having interest in the suit property have filed intervention applications to become part of the settlement. The intervention applications are allowed. Apart from the parties in appeal, all the concerned parties viz. Barku Raghunath Raut, Janabai Barku Raut, Shriram Kashinath Wakle, Annapurna Shriram Wakle, Babasaheb Shriram Wakle, Kushinath Eknath Kale, Rajendra Eknath Kale, Vimalbai Babasaheb Kale, Yogesh Babasaheb Kale, Devidas Madan Punde, Kailas Madan Punde, Bhimabai Madan Punde, Indubai Surybhan Tathe, Sindhubai Dadasaheb Pawar, Dnyaneshwar Sarjaram Pawar and Gayabai Machindra Pawar have filed their affidavits sworn in by them individually stating that they have amicably settled the matter and that they have entered into a Memo of Compromise. They have stated that in terms of Compromise Memo (Annexure-A3) and Sketch (Annexure-A5), the appeal may be disposed of.

9. As per the terms of Compromise Memo, the following is the present Family Holdings of the Suit Land i.e. 25 acres and the same reads as under:-

| | | | |
|------|---|---|--------------|
| I. | Digamber Chandu Shingrule Family (Party in all proceedings being the Lease Holder) | : | 8 Acres 5 R |
| II. | Vimalabai Babasaheb Kale Family | : | 5 Acres 1 R |
| III. | Barku Raghunath Raut Family (Barku Raghunath is the party in all the courts) | : | 7 Acres 33 R |
| IV. | Shriram Kashinath Wakle Family | : | 4 Acres 2 R |
| V. | Bhaskar Eknath Pansare | : | 1 Acre |

(All above said family are r/o Dhondalgaon,
Taluka Vaijapur, Aurangabad District,
Maharashtra)

Total : **25 Acre 40 R = 26 Acre**

The respondents herein are agreeable to take 15 acres of land from the above said family holdings in the following manner:-

| | | | |
|--------------|---|---|------------------|
| I. | Digamber Chandu Shingrule Family | : | 6 Acres |
| II. | Vimalabai Babasaheb Kale Family | : | 2 Acres |
| III. | Barku Raghunath Raut Family (Barku Raghunath is the party in all the courts) | : | 5 Acres |
| IV. | Shriram Kashinath Wakle Family | : | 2 Acres |
| V. | Bhaskar Eknath Pansare | : | 0 |
| Total | | | : 15 Acre |

10. As per the Memo of Compromise, how the lands are to be distributed among the parties as shown by way of Chart of allotment of land is as under:-

| Respondent – Original Land Owners | | | | |
|-----------------------------------|-----------------------------------|-----------------|----------------|-------------------------|
| Sl. No. | Branch No. A | Allotted | Area HR | |
| | Kachru Kishan Punde (Dead) | Plot No. | Area HR | |
| 1. | Dnyaneswar Sharjaram Pawar | 4B | 0.75 | |
| 2. | Gayabai Machhindra Pawar | 4C | 0.36 | |
| 3. | Gayabai Machhindra Pawar | 16 | 0.44 | |
| | Total | | 1.55 | 3 Acre 35 Gunthe |
| | Branch B | | | |
| | Madan Kisan Punde (Dead) | Plot No. | Area HR | |
| 1. | Kailash Madan Punde | 4A | 0.26 R | |
| 2. | Kailash Madan Punde | 5 | 0.17 R | |
| 3. | Kailash Madan Punde | 9 | 0.34 R | |
| 4. | Devidas Madan Punde | 1 | 0.61 R | |
| 5. | Devidas Madan Punde | 7 | 0.17 R | |
| | Total | | 1.55 R | 3 Acre 35 Gunthe |
| | Branch C | | | |
| | Tukaram Kisan Punde (Dead) | Plot No. | Area HR | |
| 1. | Hausabai Tukaram Punde | 19 | 0.49 R | |
| 2. | Hausabai Tukaram Punde | 18C | 0.22 R | |
| 3. | Hausabai Tukaram Punde | 18A | 0.13 R | |
| 4. | Hausabai Tukaram Punde | 17 | 0.36 R | |
| 5. | Hausabai Tukaram Punde | 24 | 0.40 R | |
| | Total | | 1.60 R | 4 Acre |
| | Total Land to Respondent | | | 4.70 R |
| | Intervenor/Purchaser | | | |
| 1. | Janyabai Barku Raut | 2 | 0.50 R | |
| 2. | Barku Raghunath Raut | 3 | 0.63 R | |

| | | | | |
|-----|---------------------------------|-----|---------------|--------------------------|
| 3. | Shriram Kashinath Wakle | 6 | 0.23 R | |
| 4. | Annapurna Shriram Wakle | 8 | 0.23 R | |
| 5. | Babasaheb Shriram Wakle | 10 | 0.46 R | |
| 6. | Kushinath Eknath Kale | 12B | 0.20 R | |
| 7. | Kushinath Eknath Kale | 20 | 0.20 R | |
| 8. | Kushinath Eknath Kale | 22 | 0.20 R | |
| 9. | Vimalbai Babasaheb Kale | 12A | 0.20 R | |
| 10. | Vimalbai Babasaheb Kale | 14A | 0.20 R | |
| 11. | Rajendra Eknath Kale | 14B | 0.20 R | |
| 12. | Rajendra Eknath Kale | 21 | 0.20 R | |
| 13. | Yogesh Babasaheb Kale | 11 | 0.20 R | |
| 14. | Yogesh Babasaheb Kale | 13 | 0.20 R | |
| 15. | Yogesh Babasaheb Kale | 23 | 0.20 R | |
| 16. | Parigabai Digamber Shrigule | 18B | 0.05 R | |
| | Total | | 4.10 R | 10 Acre 10 Gunthe |
| | Particular of Total Land | | | |
| | Branch A | | 1.55 R | 3 Acre 35 Gunthe |
| | Branch B | | 1.55 R | 3 Acre 35 Gunthe |
| | Branch C | | 1.60 R | 4 Acre |
| | Total | | 4.70 R | 11 Acre 30 Gunthe |
| | Intervenor | | 4.10 R | 10 Acre 10 Gunthe |
| | Water Project | | 2.84 R | 7 Acre 4 Gunthe |
| | Total Land | | 11.64 R | 29 Acre 4 Gunthe |

The above suit land is divided into plots and allotted as indicated in the chart are marked in the map/sketch filed (Annexure-A5). The persons who are parties to the settlement of the matter have also filed individual affidavits endorsing the compromise entered into between the parties.

11. The appeal is disposed of in terms of Memo of Compromise. The terms of Compromise (Annexure-A3) and the maps/sketches (Annexure-A5) filed thereon showing the division of the properties amongst the parties, shall form part of this judgment.

12. The Registry is directed to draft a decree in terms of the Memo of Compromise effected between the parties. The terms of Compromise/Memo of allotment of shares to the concerned parties (Annexure-A3) and also map/sketch filed thereon showing the division of the properties amongst the parties (Annexure-5) shall form part of the decree also.

13. Parties are directed to co-operate with each other in effecting mutation by moving appropriate applications before the concerned authority. The concerned authority is directed to take note of the compromise between the parties and effect mutation accordingly.

14. It is further directed that the parties concerned are at liberty to file the decree before the concerned Sub-Registrar for registration of the decree who shall register the same on compliance with the Rules and in accordance with law.

15. The appeal is accordingly, disposed of in above terms.

.....J.
[R. BANUMATHI]

.....J.
[A.S. BOPANNA]

**NEW DELHI;
DECEMBER 02, 2019.**