

ORDER BELOW EXHIBIT-37
IN R.C.A.NO.31/2011
Dayaram Dhumale Vrs. Ramrao Kokate
(CNR.No.MHAK050001442011)

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1. This an application by the appellant praying of amendment in the appeal memo. It is submitted by the appellant that, he had specifically pleaded that, his possession over the disputed property was since 1993 and he has been cultivating it as and by way of deemed tenant, as contemplated under the Bombay Tenancy and Agricultural Lands Act, 1958. Owing to the cordial relations, the appellant did not bother to get his name inserted in crop statement. The revenue Talathi, as such, continued the name of persons as mentioned in paragraph No.6 of the written statement. There was an issue framed by the Ld. Trial Court in respect of agricultural tenancy as per Exh-62. The said issue was, however, deleted by the Ld. Trial Court as per Order below Exh-72 on 03.04.2006. The appellant preferred Writ Petition No.3488/2006 against it in the Hon'ble High Court. The same also came to be dismissed. The appellant, thereupon, filed Special Leave Petition (Civil) bearing No.24786/2007 in the Hon'ble Supreme Court. On 05.09.2011 it was found by the Hon'ble Supreme Court that, the Ld. Trial Court had already decided the suit and as such, it was observed by the Hon'ble Supreme Court that, "*Needless to say, it will be open to the petitioner to press his appeal on all grounds available to him in law*". According to the appellant, the present appeal is continuation of suit. This court is

last fact finding court. It is, therefore, necessary to amend the appeal memo as below mentioned :

“v-i. The learned lower court ought to have seen that, the possession of the appellant over the suit field was even prior to entering contract of purchase of suit field with deceased respondent and, therefore, as the possession of the appellant over the field was lawful and, therefore, he become deemed tenant as contemplated by the provisions of BTAL Act, 1958.

v-ii. The learned lower court ought to have framed the said issue and sent the same for determination as per provisions of BTAL Act, 1958 to the competent authorities under the said Act.”

2. According to the appellant, the above mentioned amendment in the appeal memo is necessary to determine real question in controversy. If the appeal memo is not amended, the appellant will be put to irreparable loss.

3. Respondent opposed the application by submitting that, the proposed issue was deleted. The present appeal be heard in this factual premise.

4. Heard.

5. On perusal of the order of the Hon’ble Supreme Court, it emerges that, there is specific observation as below mentioned-

“ The admitted position is that, the suit itself has now been decided against the petitioner and his appeal against the judgment passed by the trial court is pending before the High Court. This development renders this special leave petition infructuous and it is dismissed as such.

Needless to say, it will be open to the petitioner to press his appeal on all grounds available to him in law.”

6. As per the above observations, the appellant is given liberty to press his appeal on all grounds available to him in law. This entitles the appellant to amend the appeal memo in view of observations of the Hon'ble Supreme Court. The application, as such, is well founded. The same needs to be allowed. Hence, the order -

ORDER

- 1) The application is allowed.
- 2) The appellant do amend the appeal memo on or before next date, as prayed.
- 3) Costs in cause.

Date:-04.02.2026

(B, M. Patil)
District Judge-1
Akot