

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**APPEAL FROM ORDER NO. 351 OF 2015
WITH
CIVIL APPLICATION NO. 450 OF 2015**

Dr. Sukumar Baburao Burse ... Appellant/Applicant.
V/s.
Superintendent of Police & Ors. ... Respondents.

Mr. S.S. Koregave for the appellant/applicant
Mr. Rajan Pawan, AGP for the respondent no.3.

**CORAM : K. K. TATED, J.
DATED : 17/03/2015.**

PC.:

. Not on board. At the request of Advocate for the appellant, matter is taken on board for urgent orders.

2 By this Appeal from order, appellant plaintiff challenges the order dated 12.12.2014 passed by the learned District Judge-1, Jaisingpur below Exh.1 in Regular Civil Appeal No. 80 of 2009 by which the Appellate Court deleted issue on the point of tenancy and remanded matter to Trial Court to decide afresh on the basis of evidence on record.

3 In the present proceeding, initially the appellant plaintiff filed Regular Civil Suit No. 62 of 2008 for injunction restraining the respondents defendants from disturbing his possession of suit property i.e. share of 4 Aana 4 Paisa in land bearing Survey no. 100 Hissa No. A

area 1H 91 R situated at Jaisingpur, Taluka Shirol District Kolhapur. Later on, the plaintiff filed application below Exh.30/D in Regular Civil Appeal No. 80 of 2009 for carrying out amendment on the point of declaration along with permanent injunction. That application was allowed by the learned District Judge on 22.08.2012. Thereafter, the plaintiff carried out appropriate amendment in the suit and added prayer clause 1(a) for declaration of tenancy rights.

4 The learned Counsel for the appellant submits that the Lower Appellate Court erred in coming to the conclusion that the plaintiff filed the suit for simplicitor for injunction and not for injunction as tenant. He submits that after carrying out amendment as per order dated 22.08.2012 below Exh.30/D plaintiff added prayer clause 1(a) in plaint for injunction as a tenancy. He submits that this fact was not considered properly by the Lower Appellate Court. He submits that appellant plaintiff have no objection, if matter is remanded to the Trial Court for deciding Regular Civil Suit no. 62 of 2008 on its own merits including the issue about tenancy. He submits that the following two issues were framed by the District Judge-1, Jaisingpur below Exh. 37/A/B on 05.12.2012.

“1) Whether the plaintiff proves that he is tenant in the suit property as pleaded?

2) Whether the plaintiff proves that order passed by defendant no.3 is illegal as pleaded?”

5 On the basis of these submissions, the learned Counsel for the plaintiff submits that the impugned order passed by the District Judge-1, below Exh.1 to be partly set aside i.e. deletion of the tenancy issue

and the Trial Court may be directed to decide the suit according to law.

6 On the other hand, the learned AGP Mr. Pawar appearing on behalf of respondents vehemently opposed the present Appeal from Order. He submits that initially the plaintiff filed the suit only for injunction. Thereafter, they filed application for carrying out amendment and added averments in the plaint and prayer about the tenancy. He submits that considering the facts and circumstances of the present case, the learned District Judge rightly held that it is not necessary to decide the issue on tenancy in the present proceeding by order dated 12.12.2014. On the basis of these submissions, the learned AGP submits that there is no substance in the present Appeal from Order and same to be dismissed with costs.

7 I heard both the sides at length. It is to be noted that that initially the plaintiff filed the suit for injunction. Thereafter, he preferred application for carrying out amendment for including the issue about the tenancy. That application was allowed by the Court and that order was not challenged by the defendants. Though, the defendants have not raised any objection before the Appellate Court, Appellate Court on its own deleted the issue about the tenancy, only on the ground that initially the plaintiff filed the suit only for injunction. That cannot be correct view of the Appellate Court because after amendment the plaintiff has raised the objection about the tenancy also. Hence, when the matter remanded to the Trial Court for fresh hearing, the Trial Court to decide all the issues raised by the plaintiff. Hence, I am of the opinion that, the order passed by the learned

District Judge-1 below Exh. 1 in Regular Civil Appeal No. 80 of 2009 is required to be modified as under:

ORDER

- 1) Trial Court to decide the issue no.1 about the tenancy along with other issues on its own merits.
- 2) Rest of the order dated 12th December 2014 passed by Appellate Court remains as it is.
- 3) Appeal from order as well as civil application stand disposed of accordingly.

(K.K.TATED, J.)