Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 383 OF 2014
WITH
CIVIL APPLICATION NO. 747 OF 2014 IN A.O. NO. 383 OF 2014

Raghunath Laxman Nikam & Anr. … Appellants
vs.
Arun Krishna Nikam & Anr. … Respondents

Mr. Uday P. Warunjikar, Advocate for the appellants.
Mr. A.J. Kenjale, Advocate for respondent no. 1.
Mr. Pradeep S. Gole, Advocate for respondent no. 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **15th September, 2015**

P.C.:

Admit. By consent, this Appeal is heard and decided finally at the stage of admission.

2. In this Appeal from Order, the order dated 7th January, 2014 passed by the Adhoc District Judge-2, Satara is challenged. Two suits are filed by the parties against each other. Regular Civil Suit No. 123 of 1993 is filed by the appellants against the respondents and Regular Civil Suit No. 44 of 1996 is filed by the respondent before the Civil Judge Junior Division, Koregaon, Satara. The order under challenge in this Appeal from Order is passed in Regular Civil Appeal No. 146 of 2007 wherein the judgment and decree dated 30th December, 2006 passed in Regular Civil suit Not. 44 of 1996 filed by the respondents was challenged. The

learned Civil Judge Junior Division, Koregaon has granted injunction in favour of the respondent/plaintiff in Regular Civil suit No. 44 of 1996 which is challenged by the appellants and the same is vacated by the dated 7th January, 2014.

3. The learned counsel for the appellants has submitted that as the order of injunction is vacated, the appellants have no grievance to that extent, however, they are aggrieved by the order of remanding the matter to the trial Court and more so by the order passed by the learned Judge, Satara of staying the hearing of Regular Civil Suit No. 44 of 1996 till the final disposal of Regular Civil Suit No. 123 of 1993 pending before the same Judge. The learned counsel submitted that though the land involved in the suit and the parties are the same and as the issue pertains to the tenancy and tenancy rights, it is to be decided by the Competent Authority and that issue cannot be decided by the Civil Court. He relied on the order dated 7th April, 1999 passed by the IV Additional District Judge, Satara. The issue whether Laxman, father of the appellants, was tenant in the suit land and whether Laxman became deemed purchaser of the suit land or not were to be decided by Tahsildar, Koregaon and pursuant to the said order dated 7th April, 1999 of the IV Additional District Judge, Satara, the matter was sent to Tahsildar, Koregaon for deciding those issues. The learned counsel submitted that

till today Tahsildar, Koregaon has not decided the said issues and therefore, the suit is pending before the Civil Judge Junior Division, Koregaon, as these two issues and the status of Laxman as tenant is appearing in Regular Civil Suit No. 123 of 1993. He, therefore, submitted that in view of the order under challenge in Appeal, as the decision is not given by Tahsildar in the issues in Regular Civil Suit No. 123 of 1993, his suit cannot proceed and Regular Civil suit No. 44 of 1996 which is filed against him would remain pending for years together. Thus, there is a dead lock in the proceedings.

4. The learned counsel for the respondents confirm this situation and also pointed out the orders which are referred and relied by the learned Adhoc District Judge, Satara in paragraph 13 of his order.

5. In view of these submissions and the facts pointed out to the Court, I confirm the order passed by the Adhoc District Judge-2, Satara as it is a reasoned order and cannot be faulted with. However, it is necessary to give specific directions to Tahsildar, Koregaon that he shall decide issue nos. 1 and 2 in respect of status of Laxman as a tenant or deemed purchaser, as the matters are referred by IV Additional District Judge, Satara by his order dated 7th April, 1999. Tahsildar, Koregaon is hereby directed to decide these issues on or before 10th December, 2015.

Parties to appear before the Tahsildar on 1st October, 2015.

6. Appeal stands disposed of. Civil Application is accordingly disposed of.

(MRS.MRIDULA BHATKAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order.