

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.1151 OF 2014

Babasaheb Mehabub Mulla (decd.) through heirs
Bebi Babasaheb Mulla and others ... Petitioners
Vs.
Noor Hussein Mulani (decd.) through heirs
Halimabi Noor Mulani and others ... Respondents

Mr. C. G. Gavnekar for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 23RD JUNE, 2015

P.C. :

Heard Mr. Gavnekar, learned Counsel for petitioners.

2. By this Petition under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the original defendant has challenged the judgment and order dated 14.11.2014 passed by the learned 2nd Joint Civil Judge, Junior Division, Ichalkaranji below exhibit 135 in Regular Civil Suit No.482 of 2000. By that order, the learned trial Judge rejected the application filed by the petitioners under Order VII, Rule 11(d) C.P.C. read with Section 69(2)(a) of the Indian Partnership Act, 1932.

3. In support of this Petition, Mr. Gavnekar submitted that by filing Writ Petition (St.) No.8294 of 2014, the petitioners have challenged the order dated 22.01.2014 passed by the learned Member of Maharashtra Revenue Tribunal, Pune (for short 'Tribunal'). By that order, the Tribunal allowed the Revision Application filed by the respondents and set aside the order dated 10.05.2010 passed by the Sub Divisional Officer in Appeal No.5 of 2009. By order dated 14.07.2014, this Court

rejected the claim of the petitioners for declaration of the tenancy rights. The present application is taken out on the ground that partnership firm is not duly registered and consequently, Suit is not maintainable. The Partnership Deed is illegal. The learned trial Judge has considered this aspect in paragraph 12 of the impugned order. After considering the provisions of the State Amendment, the learned trial Judge observed in paragraph 13 that the Section creates a bar to institute a Suit to enforce a right arising from a contract or confirmed by the Partnership Act unless the firm is registered. The proviso added by Maharashtra Amendment lays down that such registration of firms is not necessary for the suits instituted by heirs or legal representatives of the deceased partner of a firm for accounting of the firm or to realize the property of the firm. The submission of the plaintiff that the accounts of the partnership are to be settled is, therefore, not covered by Section 69 of the Act. The learned trial Judge further noted that the issues were framed on 09.09.1996 and plaintiffs are agitating their claims right from last 24 years. Accordingly, the learned trial Judge rejected the application.

4. After considering the submissions advance by Mr. Gavnekar, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab