

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 437 OF 2010

Ghayanshyam Vinayak Samant	..	Petitioner
VS.		
Ramesh Govind Samant & Ors.	..	Respondents

Mr. N. V. Bandiwadekar for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 24 APRIL 2015

P.C. :-

1] This petition challenges order dated 11 December 2009 by which the Civil Judge, Junior Division, Vengurla has dismissed the petitioner's application at Exhibit '43' seeking a stay on further proceedings in Regular Civil Suit No. 35 of 2004, till the authorities under the Bombay Tenancy and Agricultural Lands Act, 1948 (said Act) decide the issue of petitioner's claim to tenancy of the suit property.

2] The learned Civil judge, in making the impugned order, has placed reliance upon decision of this Court in the case of *Maruti Surve vs. Parsharam Karapkar*¹, in which it was held that in a suit for permanent injunction simplicitor, even if the defendants claim

¹ 1983 Mh. L. J. 958

tenancy rights, there is no necessity to frame issue about the tenancy and refer the same to the authorities under the said Act for adjudication.

3] The Division Bench of this Court, in the case of *Bhagwanrao s/o. Jijaba Auti vs. Ganpatrao s/o Mugaji Raut & Anr.*², has specifically held that the view expressed in the case of *Maruti Surve* (supra) is not good law. The Division Bench has held that in a suit simplicitor for permanent injunction, it is necessary to frame issue of tenancy either of the plaintiff or of the defendant and thereafter refer the matter for adjudication to the authorities under the said Act.

4] In the present case, the issue was pending before the authorities under the said Act when the impugned order is made. Mr. Bandiwadekar, the learned counsel for the petitioner submits that such issue has in fact now been decided in favour of the petitioner under Section 70-B of the said Act.

5] In view of the aforesaid including in particular, the law laid down by the Division Bench of this Court in the case of *Bhagwanrao* (supra), the impugned order dated 11 December 2009 is set aside. Further, there is no necessity to stay the suit, since according to Mr.

2 1987(3) Bom. C.R. 258

Bandiwadekar, the issue of tenancy has been decided in favour of the petitioner. The petitioner will be at liberty to place a decision of the competent authority before the Civil Court and the Civil Court to take the same into consideration at the stage of disposal of the suit.

6] The petitioner, to appear before the Civil Court on 9 June 2015 at 11.00 a.m. and produce authenticated copy of this order.

7] Accordingly, Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

8] All parties to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka