

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

WRIT PETITION STAMP NO.3310 OF 2015

Madhu Virji Sathalia and anr. : Petitioners
versus
Subhash Pandurang Gawand and ors. : Respondents.

Mr. Pramod Bhosale i/by Ms. Kavita P Shinde for the Petitioners.
Mr. A J Almeida for the Respondent Nos. 1 to 5.
Mr. Rajiv Narula i/by M/s. Jhangiani Narula & Associates for the
Respondent No.7.

CORAM : R. M. SAVANT, J.
DATE : 25th February 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 1/12/2014 passed by the learned Judge of the City Civil Court, Greater Mumbai by which order the learned Judge has disposed of the Application (Exhibit 7) filed by the Defendant Nos.1 to 3 for framing two issues as preliminary issues which are to the following effect :-

“1 Whether the present suit is barred under the provisions of BATL Act, 1948 and this Court has no jurisdiction to try and entertain the suit?

2 Whether the suit is barred by law of Limitation ?

Amongst the Issues Nos.1 to 3(vi), the framing of which was sought by the Defendant Nos.1 to 3 vide the said Application (Exhibit 7), was Issue No.3(iv) which reads thus :-

“In view of issuance of Certificate of purchase under Section 32(m) of Bombay Tenancy and Agricultural Land Act, 1948, whether the present suit is barred by principles of res-judicata ?

2 The Trial Court has rejected framing of the said Issue No.3(iv) on the ground that there is no specific pleadings regarding the res-judicata and mere order passed by the Mamlatdar cannot be a ground by framing a preliminary issue as a issue of res-judicata.

3 As indicated above the Trial Court out of the Issues Nos.1 to 3(vi), framing of which was sought vide the said Application (Exhibit 7) as preliminary issues, has chosen to frame only two issues which have been adverted to herein above. In so far as the Issue No.1 - Whether the present suit is barred under the provisions of BATL Act, 1948 and this Court has no jurisdiction to try and entertain the suit, which has been framed and which is a part of the operative part of the impugned order, is concerned, the said issue can be said to be having wide amplitude and can be said to even encompass the issue of res-judicata qua the challenge raised to the certificate issued under Section 32M of the Bombay Tenancy and Agricultural Land Act, 1948 is concerned.

4 The framing of the issue of res-judicata was sought on the ground

that there is a Certificate issued under Section 32M of the Bombay Tenancy and Agricultural Land Act by the Mamlatdar in favour of the predecessor of the Petitioners one Bhatia Raval respectively.

5 It is in the context of the Certificate issued under Section 32M of the Bombay Tenancy and Agricultural Land Act by the Mamlatdar that the issue of res-judicata, framing of which was sought by the Defendant Nos. 1 to 3, the Defendant Nos.1 to 3 sought to place reliance on Explanation VIII of Section 11 of the Code of Civil Procedure in support of their contention that since there is an adjudication by competent authority, the principles of res-judicata would be applicable in so far as the relief sought qua the said Certificate is concerned in the suit.

6 In my view, the Trial Court has therefore erred in observing that since there are no pleadings, the said issue of res-judicata cannot be framed. Hence the interest of justice would be served if Issue No.(1) which has already been framed is clarified so as to include the aspect as to whether the suit is barred in view of Explanation VIII of Section 11 of the Code of Civil Procedure. The Trial Court would accordingly adjudicate upon the said issue by taking into consideration the clarification issued by the instant order. Needless to state that the contentions of the parties on merits are kept open for being urged before the Trial Court. Hence without interfering with the impugned order,

however, by issuing the clarification as above, the above Writ Petition is disposed of.

[R.M.SAVANT, J]