

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CIVIL APPLICATION NO.1873 OF 2015
IN
WRIT PETITION NO. 7692 OF 2014
AND
WRIT PETITION NO. 7692 OF 2014

Kamlibai Babu Jadhav .. Applicant
 Since deceased through her
 Representative Unmesh Hemant More

In the matter between
 Kamlibai Babu Jadhav .. Petitioner
 Vs.

Shankar Rama Dhodi & Ors. .. Respondents

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Mr. N.R.Bubna, for the Applicant / Petitioner.
 Mrs.Neeta Karnik for the Respondent Nos. 1, 3, 4, 7 & 9.

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CORAM : M.S.SONAK, J.
DATE : 8th DECEMBER, 2015.

P.C.:

1. This petition was originally instituted by Smt. Kamlibhai Jadhav in order to question the orders dated 10th June, 2009, 15th February, 2011 and 10th April, 2014 made by the Tahsildar, Sub Divisional Officer (SDO) and the Maharashtra Revenue Tribunal (MRT) dismissing her application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act 1948 (the Tenancy Act) seeking declaration that the respondents are not the tenants of the suit property.

2. During the pendency of the present petition Smt.Kamlibai Jadhav (Smt. Jadhav) expired. One Mr Unmesh Hemant More, minor through his father and natural guardian Mr. Hemant Moreshwar More has

taken up Civil Application No. 1873 of 2015 seeking to come on record and pursue this petition. The applicant claims to have succeeded to the legal estate of Smt. Jadhav by virtue of registered Will dated 16th November, 2012.

3. This Court, on 11th August, 2015 made the following order in Civil Application No. 1873 of 2015:

“Prima facie, the Will annexed to the Civil Application on the basis of which the Petitioner i.e. Hemant Moreswar More seeks to come on record does not inspire confidence in view of the contradictory averments appearing in the said document which is a registered document. The Learned Counsel for the Petitioner therefore, seeks time to consider as to whether the Applicant desires to arm himself with any other authoritative document so as to enable him to maintain an application to come on record as the legal representative of the original Petitioner. For the said purpose, adjourned to 25.08.2015.”

4. In pursuance of the aforesaid, the applicant has filed further affidavit claiming that Smt.Jadhav had no issues and the applicant is one of the legal representatives of late Smt. Jadhav.

5. Ms Neeta Karnik, learned Counsel for respondent nos. 1, 3, 4, 7 and 9, has seriously disputed the claim of the applicant to pursue the present petition. She submits that there are serious contradictions in the Will and even the belated claim to legal heir-ship does not inspires any confidence. In a matter of such nature, Ms Karnik submits that the applicant should be first required to produce a declaration of succession from the Civil Court. Without prejudice, Ms Karnik submits that in any case, there is no merit in the main petition, particularly since the concurrent findings on fact have been recorded by no less than three authorities under the

Tenancy Act thereby dismissing Smt. Jadhav's claim for positive declaration.

6. Considering without prejudice submission made by Ms Karnik, Mr. Bubna, learned counsel for the petitioner/applicant, was heard on the merits of the matter.

7. Mr. Bubna has submitted that all the legal heirs of late Kusha Govind and at least some of the legal heirs of late Rama Arjun have filed affidavits to the effect that the names of their predecessors-in-title were incorrectly recorded in survey records, as the tenants of the suit property. Mr. Bubna submits that these affidavits have not been considered by the authorities in their proper perspective. In any case, Mr. Bubna submitted that the Maharashtra Watan Abolition Act, 1958 (said Act) applies to the suit property, as a consequence of which the provisions of the Tenancy Act were not applicable to the suit property. In such circumstances, Mr. Bubna contends that there was no question of any respondents claiming tenancy to the suit property under the provisions of Tenancy Act. Mr. Bubna submits that since these aspects have not been considered by the authorities, there is failure to exercise jurisdiction and in any case, the findings of fact are vitiated by perversity.

8. Having perused the record as well as the impugned judgments and orders made by no less than three authorities under the Tenancy Act, this is not a case for exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Based upon appreciation of the material/evidence on record, the three authorities have recorded concurrent findings of fact that the respondents are the tenants in respect of the suit property and that the petitioner had not made out any case for obtaining negative declaration.

9. Although, it is true that some of the legal representatives may have filed affidavits, the contesting respondents, i.e., respondent nos.1,3,4,7 & 9 amongst others have steadfastly maintained that they are the agricultural tenants in respect of suit properties and the entries in the survey records in the name of their predecessors-in-title were legal and validly made. The record of rights, admittedly indicate the predecessors-in-title of the respondents as tenants of the suit property for considerable period of time, Smt. Jadhav took no steps to question the entries in survey records. The authorities, have duly considered the effect of statements in the affidavits made by some of the respondents under the provisions of Tenancy Act, such statements cannot be rightly accepted, particularly as an elaborate mode as provided for surrender or relinquishment of claims of tenancy. In any case, such statements, obviously do not bind parties, who have neither made them nor subscribed to them. All these aspects have been considered by the authorities under the Tenancy Act. There is neither any failure to exercise jurisdiction nor any perversity in the record of findings of fact.

10. The MRT has considered the submission based upon the provisions of the said Act. In this case, there is no dispute that the suit property came to be re-granted. As a consequence of such re-grant, the provisions of the Tenancy Act become applicable to the suit property. Perhaps, conscious of such legal position, Smt. Jadhav chose to apply for negative declaration under the provisions of the Tenancy Act. On facts, however, Smt. Jadhav was not successful in establishing that the respondents are not the agricultural tenants in respect of suit property. Accordingly, there is no merit in the submission based upon the provisions contained in the said Act.

11. In view of the aforesaid, even if civil application were to be allowed and Mr. Unmesh More were to be permitted to prosecute this petition, no case was made out for exercise of supervisory jurisdiction and interference with the concurrent findings of fact recorded by no less than three authorities under the Tenancy Act, dismissing Smt. Jadhav's claim for negative declaration. Accordingly, no useful purpose would be served in requiring the applicant to obtain declaration from Civil Court as to heir-ship and to defer further hearing in this petition until then. Accordingly, the civil application and the writ petition are dismissed.

12. However, it is made clear that nothing contained in this order is intended to prejudice the rights, if any, which Mr.Unmesh Hemant More claims by virtue of the Will allegedly left behind back by Smt.Jadhav. It is made clear that is an independent matter and Mr.Unmesh Hemant More is at liberty to pursue his remedies in that regard. No case is, however, made out to interfere with the orders made by the Tahsildar, SDO and MRT in the under the provisions of the Tenancy Act.

13. There shall, however, be no order as to costs.

(M.S. SONAK,J.)