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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 771 OF 2013

Shri Kisan Vaman Dargude and others ... Applicants

Vs.

Goshala Manmad and others ... Respondents

Mr.Avinash B.Avhad, Advocate for Applicants.

Mr.Kunal Kumbhat i/b Ms.Sunanda Kumbhat, Advocate for Respondents.

CORAM : R. G. KETKAR, J.

DATE : 09th JULY, 2015

P.C. :

. Heard Mr.Avinash B.Avhad, learned Counsel for the applicants and Mr.Kunal Kumbhat, learned Counsel for the respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants have challenged the judgment and order dated 05/08/2013 passed by the learned Civil Judge, Junior Division, Manmad below Exhibit 17 in Regular Civil Suit No.18 of 2013. By that order, the learned trial Judge overruled the preliminary objections raised by the defendants and held that the Civil Court has jurisdiction to entertain and try the Suit.

3. In support of this Application, Mr.Avhad submitted that

defendants have raised two fold objections namely i) the Suit is barred in view of Section 50 of the Maharashtra Public Trusts Act and ii) Suit is also barred in view of the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'Act'). Mr.Avhad submitted that defendants are not raising objection based on Section 50 of the Maharashtra Public Trusts Act and are restricting their challenge only as regards bar of the Suit in view of provisions of the Act.

4. Mr.Avhad invited my attention to paragraph 9 of the written statement as also paragraph 2 of the application Exhibit 17. He submitted that in paragraph 13, the learned trial Judge dealt with the objection as regards bar of the Suit in view of the provisions of the Act. He submitted that after the impugned order was passed, Tahsildar Nandgaon has allowed the application filed by defendants under Section 70(b) of the Act and directed fixation of the purchase price under Section 32 (G) of the Act. Mr.Avhad, therefore, seeks permission to withdraw this Application with liberty to file separate application raising contention of bar of Suit in view of the decision of the Tahsildar, Nandgaon dated 27/11/2014.

5. On the other hand, Mr.Kumbhat submitted that the impugned order is passed on 05/08/2013 and the order of the Tahsildar is dated 27/11/2014 i.e. to say after the impugned order. It is also submitted that aggrieved by this order, plaintiffs have

challenged the order before the Appellate authority and the said Appeal is pending.

6. In view thereof, on the motion made by Mr.Avhad, Application is allowed to be withdrawn with liberty as prayed for. Grant of liberty shall not be construed as expression of opinion on merits of the proposed application. If such application is filed, the learned trial Judge will consider the same in accordance with law. All the contentions of the parties in that regard are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)