

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

964 WRIT PETITION NO. 8409 OF 2016

MANGALABAI SANTOSH SHIVNERKAR AND ANOTHER
VERSUS
BHAGWAT SHANKAR SHUKLA

...
Advocate for Petitioners : Suryawanshi Surendra V.
Advocate for Respondent : B.K. Patil
...

CORAM : T.V. NALAWADE, J.
DATED : 20th October, 2016.

ORDER :

1. The petition is filed to challenge the order made below Exh. 19 in Regular Civil Suit No. 82/2016, presently pending in the Court of Civil Judge, Junior Division, Pachora. Both the sides are heard.

2. The suit is filed by present respondent for relief of injunction simplicitor. He has contended that his father was protected tenant in the suit land since the year 1946-47 and after his death, he came in possession. He has made some contentions with regard to provisions of tenancy proceeding which was filed by the landlord against his family in which his family succeeded. He has contended that the landlord has now sold the property to present petitioners and due to the sale deed, purchaser is obstructing his possession over the suit

property.

3. The defendants, present petitioners have filed written statement and they have denied that plaintiff is in possession. After making such contention, the defendants, present petitioners filed application under section 9-A of Civil Procedure Code and prayed for framing preliminary issue on the point of jurisdiction of the Court. It is the case of petitioners that plaintiff is contending that he is tenant in the suit property and so, the relevant issue of jurisdiction needs to be framed as to whether Tenancy Court has jurisdiction or the Civil Court has no jurisdiction and so, further orders need to be passed. By relying on the observations made by the Division Bench of this Court in the case reported as **1987 (3) Bom.C.R. 258 [Bhagwantrao s/o. Jijaba Auti Vs. Ganpatrao s/o. Mugaji Raut and Anr.]** Trial Court has rejected the application. The Division Bench of this Court has held that when the suit is filed for relief of injunction simplicitor, issue of tenancy either in favour of plaintiff or defendant need not be considered and the Civil Court has jurisdiction to decide the suit filed for injunction simplicitor. So in such a suit, it is never necessary to frame preliminary issue for referring the point to Tenancy Court. The learned counsel for petitioners placed reliance on following four cases reported as

1998 (1) Bom.C.R. 132 (NAGPUR BENCH) [Govind s/o. Jagannath Samarth & Anr. Vs. Pundlik s/o. Jagannath Samarth & Ors.], 2013 (1) Mh.L.J. 800 [Pravin Pandurang Patil Vs. Executive Engineer, Pradhan Mantri Gram Sadak Yojana], 2015 (3) Mh.L.J. 315 [Foreshore Co-operative Housing Society Ltd. Vs. Praveen D. Desai (dead) thr. L.Rs. and Ors.], and 2012 (1) Mh.L.J. 696 [Rajan Dhansukhlal Vora Vs. Dinesh Bacchubhai Parekh and Ors.] and submitted that it was the duty of the Court to frame the preliminary issue. There is some misconception. Unless and until the point which needs to be decided as preliminary issue is raised, there cannot be such preliminary issue. The present point cannot be raised as preliminary issue in view of the nature of suit. This Court holds that Trial Court has not committed any error in rejecting the application. The petition is dismissed. Interim relief, if any, is vacated.

[T.V. NALAWADE, J.]

SSC/