

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

WRIT PETITION NO. 704 OF 2016

Mr. Tukaram Sakharam Hargude & Ors.	... Petitioner
V/s.	
Suman Prakash Kamthe & Anr.	... Respondents

Mr. Nitin Deshpande for the Petitioner.
Mr. Rohit Gangavane for the Respondent Nos. 1 and 2.

**CORAM : K. K. TATED, J.
DATED : 22/06/2016**

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner/defendant challenges the order dated 01.12.2015 passed by Joint Civil Judge, Junior Division, Godnadi (Shirur) Dist. Pune below Exh. 13 in Regular Civil Suit No. 202 of 2015 rejecting the defendant's application under Section 9A of Code of Civil Procedure, 1908 r/w Section 85 of Bombay Tenancy and Agricultural Land Act, 1984 (hereinafter will be referred to as 'the said Act') for deciding the issue of jurisdiction of the Civil Court.

3 In the present proceeding, the respondent plaintiff filed Regular Civil Suit No. 202 of 2015 before the Civil Judge, Junior Division, Godnadi for an order of injunction restraining the defendants from disturbing the plaintiff's possession in respect of agricultural land bearing Gat No. 129, admeasuring 88 Ares at Sanaswadi.

4 The defendant preferred application below Exh. 30 under Section 9A r/w Section 85 of the said Act raising an objection of jurisdiction of the Civil Court to decide the suit in which the issue about the tenancy arises. The Trial Court held that plaintiff filed simplicitor suit for injunction to protect his possession. Hence, there is no question of bar under Section 85 and/or Section 85A of the said Act. Hence, the Trial Court has rejected the defendant's application below Exh. 30 by order dated 01.12.2015.

5 Being aggrieved by the order passed by the Trial Court, petitioner defendant preferred the present Writ Petition.

6 The learned Counsel for the petitioner defendant submits that Trial Court erred in coming to the conclusion that the Civil Court has jurisdiction to entertain the suit as it is filed by the defendant, though there is specific bar under Sections 85 & 85A of the said Act. He submits that in plaint in paragraph 7 and 8 it is specifically contended that litigation is pending before the Maharashtra Revenue Tribunal in respect of suit property. In spite of that, the Trial Court held that the Civil Court has jurisdiction to entertain the suit filed by the respondent plaintiff. He submits that this Hon'ble Court be pleased to set aside the impugned order holding that in view of Sections 85 & 85-A of the said Act, Civil Court has no jurisdiction to entertain the suit as it is filed by the plaintiff.

7 On the other hand, the learned Counsel for the respondent plaintiff submits that plaintiff filed the suit for simplicitor injunction restraining the defendants from interfering in his peaceful possession of

the suit property. He submits that in the said suit, the plaintiff has not asked any declaration and/or any other relief against the defendant. He submits that simplicitor suit for injunction can be entertained by the Civil Court though the defendant may raise his plea about tenancy under the said Act. In support of his contention, he placed reliance on Judgment of this Court in the matter of **Maruti Sambha Survey V/s. Parshuram Krishna Koratkar reported in 1983 Mh.L.J. 958**. Paragraph 5 of the said Judgment reads thus:

“5. Now, in a suit for injunction simpliciter by a plaintiff who claims to be in possession, the plaintiff will be entitled to injunction only if he proves his possession on the date of the suit. If the plaintiff proves his possession on the date of the suit, the status of the defendant, who is alleged to be disturbing the possession of the plaintiff, is wholly irrelevant, because a tenant is not entitled to forcibly dispossess any person in possession against whom the tenant may have a right to claim possession. On the other hand, if the plaintiff in a suit for injunction simpliciter fails to prove his possession on the date of the suit, again, the status of the defendant becomes immaterial. In such a case, it may be that the plaintiff might like to amend the plaint, but till such amendment is prayed for and granted, the question as to whether the suit for possession can be decreed against the defendant who claims to be a tenant cannot arise. It is only if a claim for possession is to be inquired into that the status of the defendant as a tenant will become relevant. However, in either case, when a suit for injunction supplicate is filed, as issue with regard to the tenancy of the defendant is not required to be decided at all and it is not material or relevant for the purposes of the suit. Consequently, in my view, the whole reference made by the civil Court was uncalled for and the proceedings under reference were all irrelevant for the decision of the suit. In a sense, the reference becomes completely without jurisdiction because the issue of tenancy cannot be said to be involved in the suit at the present stage and this must prevent the Court

from exercising its jurisdiction under Section 85-A of the Bombay Tenancy and Agricultural Lands Act, which is conditional upon an issue being involved in the suit. Consequently, the orders of all the three authorities, namely, the Tahsildar, the Sub-Divisional Officer and the Maharashtra Revenue Tribunal, are all quashed. The reference itself is quashed. The civil Court is now directed to deal with the suit expeditiously. It is made clear that if at some stage after the finding with regard to possession an issue of tenancy becomes relevant for the decision of the suit, it will still be open to the trial Court to make such a reference. As the suit is fairly old, it should be given priority.”

8 On the basis of these submissions and the authority, the learned Counsel for the plaintiff submits that the defendant has not made out any case for setting aside the impugned order passed by the Trial Court. Hence, there is no substance in the Writ Petition and same be dismissed with costs.

9 I have heard both the sides at length. I have gone through the copy of plaint and other relevant documents placed on record by the petitioner and also the impugned order. Bare reading of the plaint filed by the plaintiff in Regular Civil Suit No. 202 of 2015 shows that the plaintiff filed the said suit only for injunction restraining the defendants from disturbing his possession in respect of suit property. Though the plaintiff made reference in paragraphs 6 & 7 of the plaint about the pendency of revenue proceeding in respect of suit property, the plaintiff has not claimed any reliefs which requires to be decided by the Court of Mamlatdar or Revenue Authority. Even the authority cited by the plaintiff in the matter of Maruti Sambha Surve (supra) covers the issue involved in the present Writ Petition, that Civil Court can proceed with

the suit for injunction unless and until an issue of tenancy becomes relevant for the decision of the suit.

10 Considering the submissions made by the learned Counsel for the plaintiff and the authority in the matter of Maruti Sambha Surve (supra), I do not find any reason to interfere with the well reasoned order passed by the Trial Court dated 01.12.2015.

11 Hence, Writ Petition stands dismissed with costs.

(K.K.TATED, J.)