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

WRIT PETITION NO. 4019 OF 2016

Mr. Chindhu Genu Malpote & Anr. ... Petitioners.

V/s.

Mr. Vitthal Shripati Malpote. ... Respondent.

Mr. Ajay Joshi for the Petitioners.
None for the Respondent.

CORAM : N.M. Jamdar, J.

31 August, 2016.

Oral Order :-

By this Petition the Petitioners challenge the order passed by the learned Civil Judge, Junior Division, Pune dated 7 August 2015 rejecting the application taken out by the Petitioner – Defendant for stay of the suit and for referring the matter to the tenancy authorities to decide the point of tenancy.

2. Heard the learned Counsel for the Petitioners. It is settled that the framing and reframing an issue to the tenancy court, and stay of the suit, should not be mechanically directed. The party

seeking such reference must show that there is a prima-facie material in support of the contentions. In the written statement stand is taken by the Petitioners that the grandfather of the Petitioners was protected tenant and the deemed purchaser. This statement postulates that the grandfather of the Petitioners should have been in possession of the suit property as a tenant as on 1 April 1957 i.e. the Tillers' date. The 7/12th extracts which have been produced on record disclose that the name of the grandfather of the Petitioners is shown in the revenue extracts since the year 1964-65. On the basis of this material, the learned Judge was justified in not making a reference.

3. No interference therefore is warranted in this impugned order. In case, during the course of the trial, the Petitioner is able to demonstrate that by cogent evidence that the grandfather of the Petitioner was a tenant on the Tillers' date, it is always open to the Petitioner to make an application for such reference and it is also open to the learned Judge to make a reference if so warranted. The Writ Petition is accordingly disposed of.

(N.M. Jamdar, J.)