

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3500 OF 2016

Vipinchandra Harkisondas Saraiya and others ... Petitioners
Vs.
Mohamed Yusuf Noorani and others ... Respondents

Mr. G. S. Godbole, Senior Advocate a/w. Mr. Avinash Fatangure i/b.
M/s. Shaunak Satpure & Co. for Petitioners.
Mr. Uday Bobade a/w. Ms Rubina Taneja and Ms Shama Taneja for
Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 07, 2016

P.C. :

Heard Mr. Godbole, learned Senior Counsel for petitioners and
Mr. Bobade, learned Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 02.11.2015 passed by the learned Judge presiding over Court Room No.20 of the Court of Small Causes, Mumbai in L.E.& C. Suit No.142/188 of 2009 as also the judgment and order dated 23.02.2016 passed by the Appellate Bench of Court of Small Causes At Mumbai in Revision Application No.353 of 2015. By these orders, the Courts below held that the Small Causes Court has jurisdiction to entertain and try the Suit.

3. In support of this Petition, Mr. Godbole Strenuously contended that the suit land is an agricultural land. In view thereof, the Small Causes Court has no jurisdiction to entertain and try the Suit. He invited my attention to Section 41 of the Presidency Small Causes Courts Act, 1882 (for short 'P.S.C.C. Act'). He submitted that sub-section (1) of Section 41 begins with “notwithstanding anything contained elsewhere

in this Act, subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits ...” Sub-section (2) lays down that “nothing contained in sub-section (1) shall apply to suits or proceedings ... to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, the Maharashtra Housing and Area Development Act, 1976 **or any other law for the time being in force, apply.** Mr. Godbole submitted that as the suit land is an agricultural land, the provisions of the Maharashtra Tenancy and Agricultural Lands Act (for short 'Act') apply. He further submitted that the issue as to whether the suit land is an agricultural land or not should have been referred by the Small Causes Court to the Mamlatdar in view of Sections 85, 85-A as also Section 70(o) of the Act. He invited my attention to Section 2(1) which defines the expression “agriculture” and Section 2(8) which defines the expression “land” as also Sections 43C, 70, 85 and 85-A of the Act. The Small Causes Court ought to have referred issue viz. whether the suit land is an agricultural land or not in view of Section 85A read with Section 70(o) of the Act.

4. Mr. Godbole also invited my attention to paragraph 27 of the appellate Court's judgment where the appellate Court has referred to decision of the Apex Court in the case of ***Foreshore Co-operative Housing Society Limited Vs. Praveen D. Desai (decd) through LRs, 2015 (6) SCC 412.*** In paragraph 28, the appellate Court reproduced paragraph 21 of **Foreshore Co-operative Housing Society Limited** (*supra*). He submitted that in fact in the decision of **Foreshore Co-operative Housing Society Limited** (*supra*), the Apex Court has reproduced paragraph 21 of **Kamlakar Eknath Salunkhe Vs. Baburav Javalkar, 2015 (2) Mh.L.J. 886.** In short, in paragraph 28, the

appellate Court wrongly reproduced paragraph 21 of **Foreshore Co-operative Housing Society Limited** (*supra*). He has invited my attention to the impugned orders and submitted that the Courts below failed to notice sub-section (2) of Section 41 of the P.S.C.C. Act. He, therefore, submitted that Petition requires consideration.

5. On the other hand, Mr. Bobade invited my attention to admissions given by Mr. Rajesh Saraiya - D.W. No.1 wherein the said witness in terms admitted that defendants are doing the business of salt manufacturing and since last 50 years, his family is doing the business of salt manufacturing in the suit premises. He, therefore, submitted that having regard to the provisions of the Act, and in particular, Section 2(1) thereof, it cannot be said that the suit land is used for agricultural purpose.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The short question is whether the suit land is agricultural land or not and consequently, whether the Court of Small Causes has jurisdiction to entertain and try the Suit. Section 2(1) of the Act defines expression “agriculture” as under:

“2. Definitions:- In this Act, unless there is anything repugnant in the subject or context,

(1) 'Agriculture' includes horticulture, the raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle, the use of any land, whether or not an appendage to rice or paddy land, for the purpose of rab manure but does not include allied pursuits or the cutting of wood only.”

7. Perusal of this definition shows that it is inclusive definition. However, it does not include manufacturing of salt in the land. In other words, manufacturing of salt cannot be said to be the agricultural

purpose. Section 2(8) of the Act defines expression 'land' to mean land which is used for agricultural purposes, among others. As the suit land is admittedly used for the purpose of manufacturing salt, it cannot be said to be used for agricultural purpose.

8. Mr. Godbole relied upon Sections 43C, 70(o), 85 and 85-A of the Act to contend that as the suit land is the agricultural land, Small Causes Court ought to have referred that issue to Mamlatdar for its decision. As I have already held that the suit land is admittedly used for manufacturing salt, it cannot be said to be an agricultural land and consequently, the provisions of the Act will not be applicable. It is, therefore, not necessary for the Small Causes Court to make a reference as to whether the suit land is agricultural land or not in view of the categorical admissions given by D.W.1 during his cross-examination.

9. Section 41 of the P.S.C.C. Act reads thus,

“S.41. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except to those to which other Acts apply to lie in Small Cause Court.- (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, but subject to the provisions of sub-section (2), the Court of Small Cause shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of any licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee or charges of rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force, apply.”

10. Mr. Godbole submitted that Section 41(1) is subject to the provisions of sub-section (2) and therefore, if the provisions of the Act are applicable, Small Causes Court will have no jurisdiction. For the reasons already indicated, I have already held that the suit land is not agricultural land and consequently, provisions of the Act will not apply. The Courts below have concurrently held that the suit land is used for the purpose of manufacturing salt and is not an agricultural land. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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