

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4761 OF 2016

Anandrao Vithoba Satav (decd)
Through Lrs and Anr

...Petitioners

Versus

Shri. Pravin Jughmandar Garg
And Ors

...Respondents

....

Mr. N.V. Walawalkar, Senior Advocate i/b. G.H. Keluskar,
Advocate for the Petitioners.

Mr. Sudhir V. Sadavarte, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd APRIL, 2016

P.C.

1. Heard Mr. N.V. Walawalkar, learned Senior Counsel for the petitioners and Mr. Sudhir Sadavarte, learned Counsel for respondent No.1, at length.

2. Mr. Walawalkar seeks permission to delete respondent Nos.2 to 9 on the ground that the petitioners have challenged the sale deed in favour of respondent No.1. In view thereof, on the motion made by Mr. Walawalkar leave to delete respondent Nos.2 to 9 is granted. Amendment shall be carried out forthwith.

3. Rule. Mr. Sadavarte waives service on behalf of respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 4.4.2016 passed by learned 5th Jt.Civil Judge, Junior Division, Pune below Exhibit-184 in R.C.S. No.115/2012. By that order, learned trial Judge rejected the application Exhibit-184 in Regular Civil Suit No.5115/2012 made by the petitioners, hereinafter referred to as the 'plaintiffs', for directing the Tahsildar/Agricultural Lands Tribunal (for short, ALT), Haveli to record findings against issue No.2-A which is to the following effect :

Does Defendant No.1 proves that he was agriculturist on the date of purchase of the suit land ?

5. By the impugned order, learned trial Judge rejected the application on the ground that the report of the Tahsildar shows that the said issue is decided. With the assistance of the learned Counsel appearing for the parties, I have perused the material

on record. I do not find that the Tahsildar/ALT, Haveli has decided the issue No.2A as referred by the Civil Court.

6. Section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'Act') lays down that no civil court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him which is by or under the Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal. Section 85A lays down that if any suit instituted in any Civil Court involved any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under the Act, the Civil Court shall stay the suit and refer such issues to such competent authority for determination. Sub-section (2) of Section 85A lays down on reference from the Civil Court, the competent authority shall deal with and decide such issue in accordance with the provisions of the Act and shall communicate its decision to the Civil Court and such Court shall thereupon dispose of the suit

in accordance with the procedure applicable thereto. Section 70 of the Act prescribes the duties of the Mamlatdar which includes (a) to decide whether a person is an agriculturist or not. In view thereof, issue No.2A, extracted hereinabove, is required to be decided by the tenancy authorities, namely, Mamlatdar in terms of section 70(a) of the Act. Perusal of the record does not indicate that the issue whether defendant No.1 is an agriculturist or not as on the date of the purchase of the suit land is not decided by the tenancy authority. It is, therefore, necessary to direct the Tahsildar, Haveli to hold necessary enquiry as contemplated by section 72 of the Act by recording reasons and transmit said finding to the trial Court. Upon receipt of said finding, learned trial Judge will proceed with the Suit. Mr. Walawalkar has tendered copy of the tenancy appeal preferred by the petitioners against the report of the Tahsildar, Haveli. As no order is passed by the Tahsildar, Haveli, he seeks permission to withdraw the appeal. He states that he will file purshis before the Sub-Divisional Officer for withdrawal of the appeal. If such purshis is filed, the Sub-Divisional Officer shall permit the petitioners to withdraw the appeal and same shall stand disposed of as withdrawn. Hence, following order :

- [i] The impugned order is set aside.
- [ii] The Tahsildar/ALT, Haveli will hold enquiry by following procedure under Section 72 of the Act and transmit the findings to the Civil Court. Trial Court will thereafter proceed with the matter in accordance with law.
- [iii] By way of abundant caution, trial Court will not proceed with the suit till the findings are transmitted by the Tahsildar/ALT, Haveli.
- [iv] The petitioners and respondent No.1 agree that they will appear before the Tahsildar/ALT, Haveli on 6.5.2016 and for that purpose no fresh notice be issued to them.
- [v] The Tahsildar/ALT, Haveli is requested to hold enquiry and pass appropriate orders within eight weeks from the date of appearance of the parties.
- [vi] All contentions of the parties on merits are expressly kept open.
- [vii] Rule is made absolute in aforesaid terms.

(R. G. KETKAR, J.)