

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 328 OF 2007

SANTOSH BALKRUSHNA JUNJUNWALA ...Applicant

Versus

KRUSHNABAI PANDURANG NALAVADE
AND ANOTHER ...Respondents

....

Mr. Bhushan Walimbe, Advocate for the Applicant.

Mr. R.S. Apte, Senior Counsel i/b. G.H. Keluskar, Advocate for Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 03rd MARCH, 2016

P.C.

1. Heard Mr. Bhushan Walimbe, learned Counsel for the applicant and Mr. R.S. Apte, learned Senior Counsel for respondents, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicant, hereinafter referred to as the 'defendant', has challenged the judgment and order dated 13.4.2007 passed by learned Civil Judge, Junior Division, Khalapur below Exhibit-18 in Regular Civil Suit No.23/2004. By that order, learned trial Judge rejected the application made by the defendant under Order 7 Rule 11(d) of CPC, for rejecting the plaint on the ground that the suit appears

from the statement made in the plaint to be barred by Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'Act').

3. The respondents, hereinafter referred to as the 'plaintiffs' instituted the suit on 7.6.2004, *inter alia*, for declaration that they became owner of Survey No.79, Hissa No.1 admeasuring 5 Hectares and 30 Ares- 3 (inclusive 0.05 pot kharaba) (for short, 'suit land'); for declaration that the mutation entry Nos.249, 376 and 551 are illegal and not binding on them and as such cancellation of those entries; for perpetual injunction restraining the defendant causing obstruction to the peaceful possession of the plaintiffs in any manner whatsoever.

4. The defendant resisted the suit by filing written statement dated 18.3.2005. During pendency of the suit, defendant filed application dated 22.8.2006 at Exhibit-18 under Order VII Rule 11(d) of CPC for rejecting the plaint. It was *inter alia* contended that in para-2 the plaintiffs asserted that Kashiram Bhau Nalawade was a protected tenant of the suit land and that he was possessing the suit land since the year 1946-47. Pandurang Bhau Nalawade was the younger brother of said Kashiram. Kashiram and Pandurang formed a joint family and Kashiram being an elder brother, was Karta of the joint family.

Kashiram died on 9.4.1955. On the death of Kashiram, Pandurang became *karta* and continued to cultivate the suit land as a protected tenant. Pandurang was cultivating the suit land as on 1.4.1957 and, therefore, became the deemed purchaser as per Section 32 of the Act. Pandurang died in the year 1998 leaving behind his widow (plaintiff No.1) and daughter (plaintiff No.2). The plaintiffs have inherited the suit land. In para-6, the plaintiffs asserted that Pandurang was cultivating the suit land on the Tillers day i.e. on 1.4.1957 and hence as per provisions of Section 32 of the Act, Pandurang became deemed purchaser and owner of the suit land and his right is not extinguished on his demise in the year 1998.

5. The defendants, therefore, contended that reading of the plaint as a whole will clearly reveal that the plaintiffs have claimed ownership on the basis that Pandurang was cultivating the suit land on Tillers day i.e. as on 1.4.1957 and, therefore, he became deemed purchaser under Section 32 of the Act. In order to succeed in the suit, the plaintiff will have to prove that (1) alleged tenancy was of the joint family of Kashiram and Pandurang (2) Pandurang was the tenant of the suit land as on 1.4.1957, and (3) Saraswati widow of Kashiram did not inherit

rights of Kashiram. Said issues will have to be decided exclusively by the tenancy authorities under the Act. In view of Section 85 of the Act, said issues are required to be decided and dealt with by either Mamlatdar or Agricultural Lands Tribunal (for short, 'Tribunal') exclusively. In view of Section 85 of the Act, Civil Court has no jurisdiction to entertain and try the suit.

6. The plaintiffs resisted the application by filing reply *inter alia* contending that Civil Court has all the powers to refer the matter to tenancy authorities or any Court *suo moto* or when applied for. The plaintiffs denied the rest of the contentions advanced in the application.

7. By the impugned order, learned trial Judge rejected the application on the ground that under Section 85-A of the Act, even if the suit is instituted in any Civil Court involving issues required to be settled, decided and 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. Apart from that the plaintiffs have challenged the mutation entries Nos. 249, 379, 376, 551 on the ground that they are null and void and the jurisdiction of the Civil Court is not expressly barred as per

Section 9 of CPC. The learned trial Judge therefore rejected the application on the ground that the Civil Court has jurisdiction to entertain and try the suit.

8. Mr. Walimbe invited my attention to the assertions made in the plaint and in particular paragraphs-2, 6 to 9 as also prayer clauses (a) and (b) and submitted that for deciding whether the plaintiffs are entitled to declaration as claimed in prayer clause (a), the issue will have to be decided only by the tenancy authorities and not by the Civil Court. As far as prayer clause (b) is concerned, the same cannot be decided by the Civil Court and the plaintiffs ought to have approached the revenue authorities for cancellation of the mutation entries. In any case, prayer clauses (b) and (c) are purely consequential based upon the outcome of prayer clause (a) of the suit. He further submitted that clever drafting of plaint has created illusion of a cause of action. The Court must nip it in the bud at the first hearing. The Court has to curtail irresponsible law suits. He relied upon the decision of the Apex Court in the case of ***T. Arivandandam vs. T.V. Satyapal and another, (1977) 4 SCC 467*** and submitted that having regard to the assertions made in the plaint and after reading the plaint as a whole as also prayers,

Civil Court has no jurisdiction to entertain and try the suit. Instead of approaching the Civil Court, the plaintiff herein ought to have approached the tenancy authorities on the ground that the plaintiffs became deemed purchasers under Section 32 of the Act as Pandurang was cultivating the suit land as on 1.4.1957.

9. Mr. Walimbe further submitted that during pendency of the suit, no interim order in the nature of injunction was operating in favour of the plaintiffs. Even, during pendency of this Civil Revision Application, interim relief in the nature of injunction is not operating in favour of the plaintiffs. For all these reasons, he submitted that the application deserves to be allowed and the suit is liable to be rejected under Order VII Rule 11(a) and (d) of CPC.

10. On the other hand Mr. Apte supported the impugned order. He submitted that while deciding the application under Order VII Rule 11 of CPC the Court has to only consider the assertions made in the plaint and cannot look into the defence set up by the defendants. He submitted that reading of the plaint, as a whole, will clearly indicate that the plaintiffs have asserted that Kashiram was cultivating the suit land and after his death, Pandurang was cultivating the suit land as on

1.4.1957. As per Section 32 of the Act, Pandurang became deemed purchaser. He further submitted that whether Pandurang was cultivating the suit land as on 1.4.1957 is a matter of evidence and that enquiry cannot be gone into at the stage of deciding application under Order VII Rule 11 of CPC.

11. Mr. Apte further submitted that in any case under Section 85-A of the Act, Civil Court can refer the issue to tenancy authorities for settling, deciding or dealing with the question to Mamlatdar or tribunal. It is, therefore, cannot be said that this is a case of inherent lack of jurisdiction of the Civil Court. He further submitted that in any case in addition to prayer clause (a), the plaintiffs have claimed relief in terms of prayer clauses (b) and (c). He submitted that only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole has to be rejected. In support of this submission, he relied upon the decision of the Apex Court in the case of **Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others, (2004) 3 SCC 137** and in particular para-13 thereof.

12. I have considered the rival submissions advanced by

the learned Counsel appearing for the parties. I have also perused the material on record.

13. At the outset Mr. Apte did not dispute and was not in a position to point out that during pendency of the suit from the year 2004, any interim relief in the nature of injunction was operating in favour of the plaintiffs. That apart it is evident from record that during pendency of this application, no interim relief in the nature of an injunction is operating in favour of the plaintiffs. In other words, from 2004 till 2016 interim relief in the nature of injunction is not operating in favour of the plaintiffs. In view thereof, the controversy now remains only in regard to prayer clauses (a) and (b) of the suit. Perusal of prayer clause (a) shows that the plaintiffs have sought declaration of ownership on the ground that Pandurang was cultivating the suit land as on 1.4.1957 and, therefore, he became deemed purchaser. With the assistance of learned Counsel appearing for the parties, I have perused the plaint. Perusal of paragraph- 2 & 6, leave no room for doubt that the entire claim made by the plaintiffs is on the basis that Pandurang was cultivating the suit land as on 1.4.1957 and thus by virtue of Section 32 of the Act he became the deemed purchaser. Section 32 (1) insofar as

it is relevant reads thus :

“32. Tenants deemed to have purchased land on tillers' day.- (1) On the first day of April, 1957 (hereinafter referred to as “the tillers day”) every tenant shall, **subject to the other provisions of this section and the provisions of the next succeeding sections**, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant if, -”

[Emphasis supplied]

14. Perusal of sub-section (1) of Section 32 of the Act, extracted hereinabove, clearly shows that on the first day of April, 1957 every tenant shall be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant subject to other provisions of Section 32 and provisions of the next succeeding sections. Though the plaintiffs claimed that Pandurang was cultivating the said land as a tenant as on 1.4.1957, *prima facie* they have not produced the proceedings under Section 32G of the Act. In short, the plaintiffs have not produced any order passed by the Tribunal or Mamlatdar accepting plaintiffs claim that Pandurang was cultivating the suit land as a tenant as on 1.4.1957. Thus prayer clause (a) of the suit can be considered only by the tenancy authorities under the Act and not by the

Civil Court. As far as prayer clause (b) is concerned, by that prayer, the plaintiffs have sought cancellation of the mutation entries. The said relief is a consequential relief depending upon grant of relief claimed in terms of prayer clause (a). As the plaintiffs have not produced any order passed by the competent tenancy authorities accepting their claims, in my opinion learned trial Judge was not justified in rejecting the application.

15. In the case of **T. Arivandandam** (supra), the Apex Court observed that if on a meaningful – not formal- reading of the plaint it is manifestly vexatious, and meritless, **in the sense of not disclosing a clear right to sue, the Court should exercise power under Order VII, Rule 11 of CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing.** Applying the tests laid down in the said decision, I am satisfied that the Civil Court will have no jurisdiction to entertain and try the suit and it is clearly barred by provisions of the Act. Perusal of paragraphs-2 and 6 and also prayer clause (a) of the Suit clearly shows that entire foundation of the suit is that initially Kashiram and after his

death his brother Pandurang was cultivating the suit land as on 1.4.1957 and thus became deemed purchaser. Mere assertion is not sufficient and the plaintiffs ought to have produced the order passed by the competent authority declaring Pandurang as a deemed purchaser under Section 32 of the Act.

[Emphasis supplied]

16. Section 32 of the Act, extracted hereinabove, clearly shows that subject to the other provisions of Section 32 and the provisions of the next succeeding sections, the tenant of a land as on 1.4.1957 is deemed to have purchased the land held by him as a tenant. In other words, it contemplates holding of an enquiry under Section 32G of the Act by the Tribunal. In the present case, the plaintiffs have not produced any material on record either to show that enquiry was held by the Tribunal or that tenancy Authorities have passed order under Section 32G proceedings accepting the claim of the plaintiffs.

17. Mr. Apte submitted that instead of rejecting the plaint on that ground, the Court may order return of the plaint for presentation before the proper Court. He relied upon the decision of Apex Court in the case of **Athmanathswami**

Devasthanam v. K. Gopalaswami Ayyangar, AIR 1965 SC 338.

18. In the light of the aforesaid discussion, the application deserves to be allowed. Hence, the following order :

- [i] Impugned order dated 13.4.2007 passed by learned Civil Judge, Junior Division, Khalapur below Exhibit-18 in Regular Civil Suit No.23/2004 is set aside;
- [ii] The plaint is ordered to be returned to the plaintiffs for presentation before the proper Court;
- [iii] Rule is made absolute in aforesaid terms. Under the circumstances, there shall be no order as to costs.

(R. G. KETKAR, J.)

Deshmane (PS)