

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11198 OF 2015

VITHAL KASHINATH BHOR AND ANR. ...Petitioners

Versus

RAMCHANDRA GOPALA TEMBEKAR
(SINCE DECD) THROUGH LRS. ...Respondents

....

Mr. Amol P. Mhatre, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 29th JANUARY, 2016

P.C.

1. Heard Mr. Amol Mhatre, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants', have challenged the judgment and order dated 28.9.2015 passed by learned Civil Judge, Junior Division at Ghodegaon below Exhibit-18 and Exhibit-1 in Regular Civil Suit No.78/2015. By that order, learned trial Judge rejected the application made by the defendants under Section 9-A read with order VII Rules 10

and 11 and order XIV Rule 2(2) of Code of Civil Procedure, 1908 (for short, 'CPC') for framing preliminary issue of jurisdiction and in the alternative returning the plaint.

3. Mr. Mhatre submitted that the respondent Ramchandra, since deceased was the landlord and Shivram was the tenant in respect of the land bearing Survey No.192/7 in all admeasuring 1 Hectare and 95 Ares situate at Mouje Avasari, Taluka Ambegaon, District Pune (for short, 'suit land').

4. The respondent landlord alleged that Shivram had executed sale deed on 31.10.1985 in favour of sons of his brother namely Vithal Kashinath Bhor and Balu Kashinath Bhor. The landlord, therefore, initiated proceedings before the Tahsildar for cancellation of the sale-deed on the ground that it was executed in violation of Section 43 of the Bombay Teanncy and Agricultural Lands Act, 1948 (for short, 'the Act'). By judgment and order dated 11.11.1997 the Maharashtra Revenue Tribunal (MRT) upheld the order of the Tahsildar and held that the sale deed dated 31.10.1985 is void. Aggrieved by that decision, the petitioners have instituted Writ Petition No.2451/1998 in this Court. It was dismissed in default and the petitioners have filed

application for restoration of the petition. The said application is pending.

5. Mr. Mhatre submitted that the landlord has instituted a Suit for declaration that the sale deed dated 31.10.1985 is illegal; for injunction restraining the defendant from creating third party interest pending the suit; and for possession of the suit land.

6. The defendants filed application under Section 9-A read with Order VII Rules 10 & 11 and under Order XIV Rule 2(2) *inter alia* contending that Civil Court has no jurisdiction to entertain and try the suit and to that effect preliminary issue may be framed or the plaint may be returned for presentation before the appropriate Court. Mr. Mhatre relied upon the decision of this Court in the case of **Vithal Malhar Kulkarni v. Tarabai Anna Patil & Anr., 2003(1) Mh.L.J. 342** as also Sections 32-P, 43 and 84-C of the Act. He invited my attention to paragraph-9 of the report to contend that the landlord is not entitled to be heard when the proceeding is under Section 32P and Section 84C of the Act. He fairly submitted that the application filed by the defendants at Exhibit-18 does not

incorporate these contentions as also contention that the suit is barred by limitation. He, therefore, seeks permission to withdraw the petition with liberty to file appropriate application raising these contentions.

7. On the motion made by Mr. Mhatre, Petition is allowed to be withdrawn with liberty as prayed for. Granting of liberty shall not be construed as an expression of opinion on merits of the proposed proceedings. All contentions of the plaintiff including objection as regards maintainability of such proceedings are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)