

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11743 OF 2015

Vijay S/o. Shankar Bhinge

...Petitioner

Versus

M/s. Ghule-Bhapkar Associates

Through Partners

...Respondents

None for the Petitioner.

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CORAM : R. G. KETKAR, J.

DATE : 18th APRIL, 2016

P.C.

1. This matter was heard at length on 7.4.2016 and was kept today for passing orders.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 28.10.2010 below Exhibit-1 in R.C.S. No.1802/2007 as also the judgment and order dated 26.3.2015 in Civil Misc. Application No.1197/2010. By order dated 28.10.2010, the learned trial Judge held that the Civil Court has no jurisdiction to entertain and try the suit and ordered return of the plaint to the plaintiff for presentation before the Tenancy Court, Pune.

The petitioner filed application under Section 114 read with Order 47 of Code of Civil Procedure, 1908 (for short, 'CPC') seeking review of the order dated 28.10.2010. That application was rejected by the learned trial Judge on 26.3.2015. It is against these orders, the petitioner has instituted the present petition.

3. The petitioner, hereinafter referred to as the 'plaintiff' has instituted R.C.S. No.1802/2007 against the respondents, hereinafter referred to as 'defendants' *inter alia* for declaration that the defendants have no right whatsoever in respect of his share in land bearing Survey No.54/22 admeasuring 0.75 Ares of village Hadapsar, Taluka-Haveli, District-Pune (for short, 'suit land') and that they have no right to develop the suit land by obtaining building plans and/or entering into any agreements, deeds, documents and/or creating any third party interest whatsoever in the suit land and/or carrying on construction thereon; for perpetual injunction restraining the defendants from carrying out any development activities, constructions and/or creating any third party interest in the suit land by entering into any agreement, deeds, documents etc. for

themselves and/or their predecessors in interest etc..

4. During pendency of the suit, the plaintiff took out application for temporary injunction. The defendants raised objection on the ground that Civil Court has no jurisdiction to entertain and try the suit. On 23.8.2010, the learned trial Judge framed preliminary issues, namely, (1) whether the plaintiff has properly valued the suit ? and (2) whether the Civil Court has jurisdiction to entertain and try the suit?. By order dated 28.10.2010, the learned trial Judge disposed of the suit and directed return of plaint to the plaintiff for presentation before the Tenancy Court, Pune. Insofar as issue No.2 is concerned, the learned trial Judge noted that in the proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'Act'), Parvatibai Tukaram Tupe and 13 others purchased the suit land. In pursuance thereof, certificate under Section 32M of the Act was issued in their favour. Learned trial Judge, therefore, held that Parvatibai Tupe and 13 others became the absolute owners of the property. On 15.4.1997 Parvatibai Tupe and other owners executed power of attorney. On the strength of power of attorney, the development

agreement was executed in favour of the defendants on 6.11.2006. Learned trial Judge therefore observed that unless and until the certificate under Section 32M of the Act is not cancelled by the competent authority, Civil Court cannot adjudicate the issue of tenancy and consequently has no jurisdiction to entertain and try the suit.

5. Aggrieved by this order, the plaintiff preferred Review Petition which was rejected by the learned trial Judge.

6. Mr. Dube reiterated the submissions that were advanced before the trial Court. He submitted that learned trial Judge committed serious error in coming to the conclusion that Civil Court has no jurisdiction to entertain and try the suit. He submitted that while considering the issue of jurisdiction only the pleadings in the plaint have to be taken into consideration and not the probable defence set up by the defendants. He relied upon following decisions

- [i] Lakhamal Brujal Purohit vs. Marwadi Sanstha Hanuman Mandir, (2006) 2 Mh.L.J. 479
- [ii] Immigrant Ideal Procedures Co-op. Society vs. Johannara Moiz Dalal, (2004) 3 Mh.L.J. 910

[iii] Sharda Shantaram Prabhale vs. Narendra Shantaram Prabhale and others, (2000) 2 Mh.L.J. 113.

7. He submitted that the relief for declaration of ownership can be granted only by the Civil Court. He, therefore, submitted that the impugned order deserves to be set aside and the Petition requires to be admitted.

8. I have considered the submissions advanced by learned Counsel appearing for the petitioner. I have also perused the material on record. Perusal of the record shows that the landlady Bhagiratibai Bhinge, being widow, tillers day was postponed. The legal representatives of the tenant filed application before the Additional Tahsildar and Agricultural Lands Tribunal, Haveli under Section 32G of the Act read with Section 32O of the Act. In pursuance thereof, the proceedings were conducted and the purchase price was fixed. The petitioner preferred appeal against the order dated 15.6.1996 before the Sub-Divisional Officer, Pune which was dismissed. Aggrieved by this decision, the petitioner instituted Revision Application before the Maharashtra Revenue Tribunal along with application for condonation of delay. Thus as of today the decisions of tenancy authorities have not been set aside. As

noted earlier, the learned trial Judge came to the conclusion that unless and until the orders passed by the tenancy authorities under Section 32G of the Act are set aside and unless and until the certificate under Section 32M of the Act is not cancelled by the competent authority, the issue of ownership cannot be decided by the Civil Court. In view of Section 85A of the Act, Civil Court has no jurisdiction to entertain and try the suit.

9. In view of categorical finding recorded by the trial Court, I do not find that the learned trial Judge has committed any error in holding that the Civil Court has no jurisdiction to entertain and try the suit. Hence, the petition fails and the same is dismissed.

(R. G. KETKAR, J.)