

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5243 OF 2017
(Shantabai Rupchand Mali (died) and others Vs. Tejshri @ Hansa
Jayantilal @ Jayawant Doshi and others)

Mr.S.V.Natu, Advocate for the petitioners.
Mr.S.P.Brahme, Advocate for respondent Nos. 1 to 3.
Mr.S.K.Tambe, AGP for State/respondent No.4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 21/09/2017

PER COURT :

1. The petitioner, LR's of original defendant No.3 Shantabai, are aggrieved by the order dated 17/02/2017 passed by the Appellate Court, thereby rejecting application Exh.33 filed by them seeking framing of a preliminary issue and a decision so as to refer the issue to the Mamlatdar u/s 70 and 85-A of the Maharashtra Tenancy and Agricultural Lands Act.

2. I have considered the submissions of the learned Advocates for the respective sides. The petitioners have placed reliance upon the judgment of the Hon'ble Apex Court in the matter of Gundaji Satwaji Shinde Vs.Ramchandra Bhikaji Joshi [1979 AIR(SC) 653]. Learned Advocate for the respondents/original plaintiff Nos.1 to 3 relies upon the judgment of the learned Division Bench of this Court in the

matter of Pulmati Shyamlal Mishra and another Vs. Ramkrishna Gangaprasad Bajpai and others [1981 Mh.L.J. 321].

3. I find that the grievance of the petitioners is that after the Trial Court had framed an issue as to whether the plaintiff was a cultivator by occupation at the time of the transaction with the suit property at issue in RCS No.74/1998, the Trial Court could not have taken upon itself the mantle of deciding the said issue and so as to conclude that it had jurisdiction to deal with the matter. It is pointed out that the Trial Court has decided the said issue in favour of the plaintiffs on the ground that when the said plaintiffs had sought the permission of the Mamlatdar, the said Authority must have verified for itself that the concerned plaintiffs were agriculturists and based on such impression, must have granted the permission.

4. There is no dispute that the plaintiffs have preferred the suit for declaration of ownership and possession, as well as for challenging the alienation of the property at the hands of defendant No.1.

5. It is the plaintiffs' case that the deceased plaintiff and defendant No.1, though unrelated to each other, had jointly

purchased the suit land on 28/03/1972 from one Mr.Gosavi by executing a registered sale deed. As the plaintiff was away from the suit land, defendant No.1 took advantage of the absence of the plaintiff and sold the land to defendant Nos. 2 and 3 on 17/12/1988 by executing specific sale deeds.

6. The petitioners, who are appellants before the Appellate Court, having suffered the judgment and decree dated 13/09/2010 allowing the suit, have raised this issue as to whether the Trial Court could have continued with the suit after issue no.1-B was framed. It is also canvassed before the Appellate Court that considering the conclusions of the Hon'ble Apex Court in the Gundaji case (supra), the Trial Court should have referred the matter to the concerned authority by staying the suit u/s 85-A. Having failed to do so, would render the impugned judgment null and void.

7. The learned Division Bench of this Court has held in the case of Pulmati (supra) that merely because an objection is raised by the defendant that the plaintiffs are not agriculturists, would not mean that the Trial Court should mechanically refer the matter to the Mamlatdar for adjudication.

8. In my view, when this specific issue has been raised by the petitioners/defendants before the Appellate Court, there was no reason to file Exh.33 calling for an order on the same issue which is already raised in the appeal and which the Appellate Court would certainly decide in view of the law that is crystallized. The Appellate Court has observed in the impugned order that all these objections and grounds are being taken up by the said Appellate Court while hearing the appeal, which is almost 7 years old.

9. As such, I do not find that the impugned order, rejecting Exh.33, would in any way create any obstruction or obstacle for the petitioners to canvass all the points with reference to the judgment and decree impugned and especially with regard to issue No.1-B. The learned Advocate for the petitioners has voiced an apprehension that the Appellate Court appears to have made up its mind in this matter. I find that the said apprehension is misconceived because the issue, which the petitioners have raised in Exh.33, has in fact being raised in the Regular Civil Appeal No.24/2010.

10. Considering the above, this petition is disposed of with the direction that the Appellate Court would consider the pending appeal No.24/2010 as expeditiously as possible and preferably on or before

29/12/2017, on its own merits and by considering all the contentions of the litigating sides and the law cited.

11. Needless to state, as the petitioners have raised the issue in the appeal that the matter should have been referred to the Mamlatdar considering that the deceased Jayantilal was not an agriculturist, the said issue will have to be decided by the Appellate Court.

(Ravindra V.Ghuge, J.)