IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8041 OF 2016

Smt. Sushilabai Ramhari Ghule and others **...PETITIONERS**

VERSUS

Smt. Walhubai Sheku Waghchaure and others **..RESPONDENTS**

Mr N.D. Sonawane, Advocate for petitioners.
Mr A.S. Shejwal, Advocate for respondents No. 1 to 3

CORAM : NITIN W. SAMBRE, J.

DATE :25th September, 2017

ORAL ORDER :

In Regular Civil Suit No. 40 of 2015 pending on the file of Civil Judge (Junior Division), Kannad, which is for declaration of ownership, application Exh. 32 came to be moved by the defendants praying therein to refer Issue of Tenancy, raised in the written statement, to the Tribunal. The said application came to be rejected, vide impugned order dated 13th April 2016.

2. While rejecting application Exh. 32, the Trial Court has observed that the issue of tenancy is already decided.

3. When confronted, learned Counsel for the respondents would submit that in view of transfer of land in question, the Issue of Tenancy no more arises and hence such findings are recorded.

4. Said submission, in any case, in my opinion, cannot be termed as adjudication of rights whether their exists tenancy or not.

5. As the reason furnished by the Court below while rejecting application Exh. 32 is contrary to record, it will be appropriate to set aside impugned order dated April 13, 2016.

6. As such, the impugned order is quashed and set aside. Application Exh. 32 be decided afresh keeping in mind above observations.

(NITIN W. SAMBRE, J.)

pjm.