

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10433 OF 2017

HIMAYAT NOOR ISLAM PATEL
VERSUS
ALAKNANDA BHAGWANDAS HEDA AND OTHERS

...
Advocate for Petitioner : Shri Patil B.N..
AGP for Respondents 2 and 3/ State : Shri S.K.Tambe.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th August, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 09.06.2017 by which the Trial Court has rejected the application Exhibit-31 filed by the Petitioner/ Defendant No.3 and has declined to take up a particular issue for a peremptory trial.

2 The Petitioner/ Defendant No.3 contends that he has obtained a certificate under the Hyderabad Tenancy and Agricultural Lands Act, 1950. Considering the same, a civil suit would be barred. It is further contended that once the civil suit is barred under Section 99 of the said Act, any dispute raised cannot be decided by the Civil Court. Reliance is placed on the judgment of this Court in the matter of Arjun Dada Gadage vs. Mallappa Gurappa Chougule and another, 2003 (4) Mh.L.J. 256.

3 I have considered the submissions of the learned Advocate for the Petitioner and have gone through the petition paper book with his assistance.

4 It requires no debate that the issues are cast based on the pleadings of the parties and the documents and material available before the Trial Court at the stage of framing of the issues. The Plaintiff has contended that the Petitioner has prepared forged documents and based on the same, he is projecting himself to be a tenant. The Petitioner has averred in the Written Statement that he is declared to be a tenant and no further dispute can be raised with regard to the said status. Considering the rival pleadings, the Trial Court has framed the issues and one amongst the said issues is as regards whether, the Trial Court has jurisdiction to entertain the suit.

5 While passing the impugned order, the Trial Court has concluded that the issue which the Petitioner desires to be tried peremptorily could be considered after recording of evidence of both sides as the Plaintiff has specifically come forward with the case that the documents are forged. It, therefore, appears that the said issue is a mixed question of facts and law.

6 The Petitioner has voiced a grievance that the Trial Court has concluded that it has jurisdiction to try the suit considering the effect of the Specific Relief Act. I find the said submission to be purely out of

apprehension since the Trial Court has concluded in the impugned order by holding that *"Therefore, this Court is of the view that, the issue of jurisdiction can be framed, however, it cannot be framed as a preliminary issue."*

7 Though the above conclusion may not be properly worded, the meaning appearing from the impugned order is obvious that the Trial Court is going to consider the issue of jurisdiction after recording of evidence and as such, the said issue is open for adjudication.

8 Order XIV Rule 2 as well as Section 9-A of the Code of Civil Procedure enables the Trial Court to exercise its discretion and decide whether, a particular issue needs to be considered peremptorily. It cannot be stated to be a straitjacket formula that the moment an application invokes Section 9-A of the Code of Civil Procedure, the Trial Court would be bound to take up the said issue as a preliminary issue. If such an argument is accepted, every litigant would invoke Section 9-A thereby, compelling the Trial Court to abdicate its discretionary powers to assess whether, the grievance voiced in such application needs to be decided peremptorily.

9 Considering the above, this Writ Petition being devoid of merit is, therefore, dismissed.