

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9619 OF 2016

MADHAV BHOJU BENDRIKAR AND OTHERS
VERSUS
VISHWAMBAR SAHADEV WANI AND OTHERS

...

Advocate for Petitioners : Shri Mukhedkar Amit A.
Advocate for Respondents 1 to 10 : Shri Padalkar Harshad H.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: December 07, 2017

...

PER COURT :-

1. The petitioners are aggrieved by the order dated 10.8.2016, passed by the trial Court below application Exhibit 144 in RCS No.25 of 2009, by which, the request by the petitioners / plaintiffs for framing additional issues or recasting the issues, has been rejected.

2. The learned counsel for the petitioners submits on the basis of the settled position of law that issues have to be framed by the trial Court after carefully perusing the pleadings of the parties. If the plaintiffs have come forward with a specific case and if issues are not cast so as to ensure that the contentions be tested through the adjudicatory process, it would lead to a miscarriage of justice.

3. Learned counsel for the petitioners has drawn my attention to the Written Statement filed by defendants 1 to 6 and especially paragraph No.5, wherein, the predecessor in title Girjabai w/o Jalba was the owner of the suit land and she had become the owner through the family partition, which occurred prior to 1951. The father of the plaintiffs 1 to 3 i.e. Sahadev Sakharam, was the protected tenant of Girjabai with regard to the suit land. He had preferential rights to purchase the suit lands. Girjabai had sold the suit lands and one house to Sahadev for the consideration of Rs.35,000/- and she executed a registered sale deed bearing No.2775 on 9.9.1971 in favour of Sahadev. The revenue authority has sanctioned the mutation entry bearing No.118 on 28.2.1972 on the basis of the registered sale deed. Contention of the petitioners is that in the light of the above pleadings by some of the defendants, the tenancy issue needs to be cast and the matter needs to be referred to the Tenancy Court.

4. Learned counsel for the defendants submits that the issues cast by the trial Court on 18.3.2014 are based on the pleadings of the parties. The defendants have merely narrated the history of the title of Girjabai and the purchase by Sahadev. They are not questioning the tenancy rights nor are they raising a tenancy issue with regard to the suit land.

5. It is further contended on the basis of the pleadings of the plaintiffs in the plaint that nowhere the plaintiffs raised any issue with regard to the tenancy rights of Sahadev. The entire contention of the plaintiffs is that the father of defendants 1 and 2 i.e. Sahadev had prepared a false and forged sale deed in 1991 and had got the suit land mutated in his name. Such mutation entries of 1971 came to the knowledge of the plaintiffs in 2006. Their challenge to the mutation entry was subject matter of an appeal No.57 of 2006. Further contention of the defendants is that the petitioners have failed to upset the mutation entry upto the revisional Court.

6. My attention is then drawn by the defendants to a judgment dated 22.10.1973, delivered in Special Civil Suit No.26 of 1972. In the said suit, Girjabai Jalba and Sahadev Sakharam, who were defendants, had raised the issue of defendant No.2 Sahadev being a protected tenant. By the said judgment, the contentions in regard to tenancy have been put to rests as it was concluded that Girjabai had legally sold the land to Sahadev.

7. Reliance is placed upon the judgment of this Court in the matter of Mohammad Hayatkhan Karimkhan Vs. Taramati Sadhu Khindkar [2011 (7) All MR 644], and especially paragraph No.13,

which reads as under:-

"13. In order to frame an issue and direct reference thereof for determination of tenancy authorities, one has to see, whether such issue is necessary for adjudication of the claim made in the suit. It is also necessary to consider as to whether plea raised is bona fide or merely raised to delay decision in the matter, which entitle plaintiffs - petitioners herein to remain in possession over the property until adjudication of the issue. It is also necessary to see whether there is sufficient material placed on record to frame an issue and to make a reference. It is well settled that frivolous plea of tenancy need not be a matter of reference and the Court, before framing an issue and directing reference thereof, is entitled to see whether such plea is bona fide and has any basis in the pleadings or the material placed on record."

8. I find from the submissions of the learned Advocates and the petition paper book that these petitioners have not even whispered about the issue of tenancy in their plaint. The pleadings indicate that the plaintiffs do not desire any reference to the tenancy Court.

9. Even if that was the desire of the plaintiffs, the contentions putforth by them need to be scrutinized as has been held by this Court in paragraph No.13 of the Mohammad Hayatkhan's case (supra), as to whether the desire of the litigating sides is to stall civil

court proceedings under the pretext of raising tenancy issue, so as to prolong the proceedings and retain the possession of the suit land. In the absence of any pleadings in the plaint with regard to tenancy, I do not find that the trial Court has committed any error in concluding that there is no tenancy issue involved which requires any adjudication.

10. It cannot be ignored that the plaintiffs have filed the suit for seeking the relief of declaration that they are the owners and possessors of the suit land. The registered sale deed dated 9.9.1971 is sought to be assailed in a suit, which has been instituted by the plaintiffs on 2.9.2009, which is after about 38 years. The thrust of the plaintiffs' case is that the sale deed is a forged document and is not binding upon them. In this backdrop, I do not see any reason for the trial Court to consider any issue of tenancy in the matter.

11. Considering the above, the impugned order can neither be termed as being perverse nor erroneous. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

...