

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

925 WRIT PETITION NO. 14081 OF 2017

MANOHAR ALU PAWAR AND OTHERS
VERSUS
JANARDHAN REWA PAWAR AND OTHERS

...
Advocate for Petitioners : Mr. S. S. Kazi.

...

CORAM : **V. K. JADHAV, J.**
DATE : 05th December, 2017.

ORDER:

. I find no substance in this writ petition. The Petitioners / original Defendants have filed an application Exhibit 19 in Regular Civil Suit No.184 of 2016 for framing of preliminary issue in respect of the jurisdiction and maintainability of the suit.

2 The Respondents / Plaintiffs have instituted the suit against the Petitioners / Defendants in respect of the land Survey No.641 situated at village Kuranwadi, Taluka Ambajogai. According to the Plaintiffs, the father of Plaintiff Nos.1 to 3 namely Reva Seva Pawar and father of Plaintiff Nos.4 to 7 namely Fula Seva Pawar were and are in actual possession of the land admeasuring 29 Acres 31 Gunthas in Survey No.641 since 1969. They are in continuous possession of the suit property since last 55 years. According to the

Respondents / Plaintiffs, Alu Seva Pawar has no concern with the suit property. In spite of this, the Tahsildar, Ambajogai without making any inquiry in respect of possession and record of land Survey No.641, declared the Petitioners / Defendants as tenants to the extent of 9 Acre 31 Gunthas. Aggrieved by the same, the Respondents / Plaintiffs have moved an appeal before the Deputy Collector, which is still pending. According to the Respondents / Plaintiffs, the Petitioners / Defendants are trying to disturb their peaceful possession over the suit property bearing Survey No.641 and accordingly, they have instituted the suit simplicitor for a decree of perpetual injunction.

3 The Petitioners / Defendants have filed an application Exhibit 19 mainly on the ground that the Petitioners / Defendants are declared as tenants of the suit property by the Tenancy Court and therefore, the Civil Court has no jurisdiction to try and entertain the suit and for that purpose, the Petitioners / Defendants relied on Section 99 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. As per Section 99, no Civil Court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is or was at any time in the past a tenant or protected tenant and whether any such tenant or protected tenant is or should be deemed to be full owner of the lands. The Respondents / Plaintiffs are seeking a decree

of perpetual injunction against the Petitioners / Defendants on the basis of their long standing possession over the suit land Survey No.641. They cannot be dispossessed otherwise than the due process of law. The learned Judge of the Trial Court has therefore, rightly held that if the suit is for injunction simplicitor based on previous possession, the law does not prohibit the Civil Court from protecting the subject matter of the dispute until claims in relation to tenancy are settled by the competent and appropriate authorities. I do not find any fault in the impugned order passed by the learned 2nd Joint Civil Judge, Junior Division, Ambajogai. There is no substance in the writ petition. The writ petition is hereby dismissed. No costs.

4 It is made clear that these are the observations while disposing of the writ petition preferred against the rejection of the application seeking framing of preliminary issue only.

[V. K. JADHAV, J.]