

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.942/2017
IN
SECOND APPEAL NO.552/2016

Usha Raghunath Khandkatkar ... Applicant

Sudhakar Anandha Salunkhe ... Appellant

V/s.

Bhagirathi Visnu Musale & Ors. ... Respondents

Mr. Atharva A. Dandekar for the Applicant

Mr. Aditya S. Desai for the Appellant

Mr. T. S. Ingle i/b. Nikhil Pawar for Respondent Nos.1 to 6.

CORAM: K.K. TATED, J.

DATED : DECEMBER 12, 2017

PC. :

1. Heard the learned counsel for the parties. This application is made by the third party for joining them as Respondent in the Second Appeal and for remanding the Regular Civil Suit No. 57/1995 and counter claim to the learned Civil Judge, Junior Division, Islampur for hearing on merits after adding the applicant Usha Raghunath Khadkatkar as a party defendant.

2. It is the case of the applicant that in the present proceedings, Mr. Sudhakar Ananda Salunkhe, original plaintiff had filed Regular Civil Suit No. 57/1995 in the Civil Court, Islampur for an order of injunction

restraining the defendant in that suit disturbing the plaintiff's possession in respect of Gut No.1377 admeasuring 0H 32R (old Sy.No.485/6) situate at Mauje Bahe, Tq. Walva, Dist. Sangli. He submits that in the said proceedings the appellate court, in paragraph 18 of the judgment and decree dated 07.12.2015 in Regular Civil Appeal No. 119/2009 held that the Respondent is tenant in the suit premises, on the basis of the statement of Rama Musale and Anusaya Badavi recorded on 22.01.1961 (Exhibit- 128) in an enquiry proceedings u/s.32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (the said Act). He submits that in Exhibit- 128, it was incorrectly recorded that the applicant is a widow of Ganesh Rajaram Badavi whereas the applicant is a daughter of Ganesh. He submits that to rectify all these things, the applicant had made an application u/s. 70-B of the said Act being application No.7/2016 before the learned Tahasildar, Islampur. He submits that the said application is pending for hearing on merits. He submits that unless and until findings given by the appellate court in Regular Civil Appeal No.119/2009 in order dated 07.12.2015 are set aside, his rights are going to affect. Hence, he has filed the Civil Application to add them as a party.

3. On the other hand, the learned counsel for the Appellant as well as the Respondent i.e. the plaintiff defendant opposed the Civil Application. After arguing for some time, the learned counsel for the plaintiff and the defendant made a statement before this court that they have no objection if the Tahasildar, Islampur decides the application made by the applicant u/s.70-B of the said Act being No.7/2016 on its own merits without being influenced by the

observations and/or decision given by the learned District Judge -11, Islampur dated 07.12.2015 in Regular Civil Appeal No.119/2009.

4. In view of these statements made by the learned counsel for the plaintiff and the defendant, I do not find any reason to allow the present Civil Application for joining the applicant as a party in the present Second Appeal.

5. Admittedly, in the present proceedings, the dispute is between the plaintiff and the defendant about possession of the suit property. Whereas the applicant is claiming to be owner of the same through one Mr. Ganesh and to that effect, an Application u/s.70B of the said Act is already pending before the concerned Tahasildar, Islampur. In view of these facts, following order is passed:

- a. The Civil Application stands rejected.
- b. The Tahasildar, Islampur is directed to decide the application No.7/2016 u/s.70B of the said Act made by the applicant, on its own merits, without being influenced by the decision given by the District Judge-II, Islampur dated 07.12.2015 in Regular Civil Appeal No.119/2009.
- c. No order as to costs.

(K.K. TATED, J.)