

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9401 OF 2011

Madhukar R. Gosavi

.. Petitioner

VS.

Dinkar R. Samant & Ors.

.. Respondents

Mr. G. H. Keluskar and Mr. Sudhir Prabhu for Petitioner.
Mr. N. N. Gavankar with. Mr. Manas N. Gavankar i/b. Sharan Patole for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.

DATE : 06 NOVEMBER 2017.

P.C. :-

1] Learned counsel for the petitioner seeks leave to delete respondent nos. 3 and 4 as their presence is not required for the purpose of deciding the present writ petition. Leave is granted. Necessary amendment to be carried out forthwith.

2] Heard learned counsel for the parties.

3] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

4] The challenge in this petition is to the order dated 22nd July 2011, by which, the learned trial Judge, has struck out Issue No.2

which pertains to the issue of agricultural tenancy and directed that the suit can proceed even without waiting for the decision of the Tahsildar on the issue of tenancy, which is pending in tenancy case no. 1 of 1989.

5] The reasoning of the learned trial Judge is contained in paragraph 7 of the impugned order, which reads as follows:

“7. It would be pertinent to note here that the suit is for simplisitor injunction which to be decided on the basis of possession only. The issue of title do not arise in the suit. Defendant No. 2 has filed one case law which is Anandrao Bandu Jadhav v. Bibijan w/o. Usuf Pathan, cited in 1982 Mh. L.J. Page 748, in this Single Bench Judgment it is decided that Order 14 Rule 5 of CPC expressly permits the Court at any time before passing the decree to strike out any issue that appears to it to be wrongly framed. The ratio in this judgment is quite clear explaining CPC Order 14 Rule 5. Considering the nature of the suit it is apparent that the issue regarding title is not contended by the plaintiff. He has only sought relief of simplisitor injunction for which it is not necessary to frame the issue regarding his title. Therefore, considering all these things I proceed to pass following order.

ORDER

1. Application at Exh. 74 stands rejected.
2. Issue No. 2 is struck out. Order regarding same will be passed at Exh. 24.

Date: 22.07.2011

sd/-
Civil Judge, Jr. Dn. Kudal.”

6] The aforesaid reasoning of the learned trial Judge is contrary to the decision of the Division Bench of this Court in the case of

Bhagwanrao vs. Ganpatrao & Anr. and Ganpatrao Mugaji Raut & Anr. vs. Bhagwanrao Jijaba Auti¹, which was in fact, a decision in a reference to the Division Bench to decide the following question:

“In a suit simpliciter for permanent injunction, is it necessary to frame an issue of tenancy either of the plaintiff or of the defendant?”

7] The Division Bench, in terms, has held that in a suit simpliciter for perpetual injunction, although, the relief of injunction is a substantive relief by itself, a declaration is implicit in the grant of such relief, although declaration may not have been claimed in so many words, therefore, when the plaintiff comes to the court for such a relief of injunction simpliciter, on the basis of the previous possession, he impliedly seeks from the court a declaration of his possessory title. In such a suit, the issue of tenancy arises, then, such issue, has to be decided only by the tenancy courts.

8] Accordingly, the impugned order is set aside.

9] Mr. Gavankar, learned counsel for respondent nos. 1 and 2 however points out that the issue of tenancy in tenancy case no. 1 of 1989 is pending before the Tahsildar, Kudal since the year 1989

1 1987 Mah. L. R. 1311

and submits that some directions be issued for expeditious disposal of said matter. The request is absolutely reasonable and therefore, the Tahsildar of Kudal is directed to dispose of tenancy case no. 1 of 1989 as expeditiously as possible and in any case, within a period of six months from the date of production of authenticated copy of this order. In fact, the parties are directed to appear before the Tahsildar at Kudal on 27th November 2017 and produce an authenticated copy of this order.

10] Rule is disposed of in the petition in the aforesaid terms. There shall be no order as to costs.

11] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)