

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 627 OF 2016
WITH
CIVIL APPLICATION NO. 2273 OF 2016

Pankaj Lalitkumar Agrawal & Ors. ...	Petitioners
Vs.	
Maruti Hasu Ghodinde & Ors. ...	Respondents

Mr. Rajesh S. Datar, for the petitioners,
Mr. Vijay S. Gharat for respondent Nos. 1 to 3.
Ms. Sheetal S. Kadam for respondent Nos. 4 to 9.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 7th November, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith consent of the parties.

2. The petitioners herein happens to be the original defendants in Regular Civil Suit No.72 of 2010. The plaintiffs had prayed for a declaration that they be declared as the legal heirs of one Hasu Nama Ghodinde. The second prayer was to declare the sale deed dated 3.7.2009 as null and void and the third prayer was that the defendants should not obstruct the peaceful possession of the plaintiffs.

3. The respondents had filed an application below Exhibit 53 and had prayed before the Court that the Court shall frame an issue as follows :

“Whether the plaintiffs prove that deceased Hasu Nama Ghodinde was tenant in the suit property on the tillers day”

The said application has been allowed and the learned Court has framed the issue.

4. The learned counsel for the petitioner rightly submits that the Civil Court would have no jurisdiction to decide the said issue as the plaintiff claims to be a protected tenant of the disputed property. According to the plaintiff, he has been in possession of the suit property prior to the tillers day i.e. since 1948.

5. It is pertinent to note that the plaintiff does not have a certificate under Section 32-M and the proper procedure would be to apply before the appropriate authority i.e. the Agricultural Lands Tribunal and establish his claim of being a protected tenant much before the tillers day. In view of this, the order dated 21.11.2015 thereby framing the aforesaid issue deserves to be rejected. The original plaintiffs i.e. present respondent Nos. 1 to 3 would be at liberty to approach the appropriate authority and get the claim of being a protected tenant established by the proper authority.

6. Hence, the Petition is allowed. The order dated 21.11.2015 passed by the Civil Judge, Senior Division, Karjat below Exhibit 53 in Regular Civil Suit No.72 of 2010 is quashed and set aside with liberty as stated above. Rule is made absolute in the above terms.

7. In view of the disposal of the Writ Petition, Civil Application No.2273 of 2016 also stands disposed of.

[SMT. SADHANA S.JADHAV, J.]