

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Revision Application No. 98 of 2015
[Prashant alias Anant Vishnu Amte & another Vs. Sau. Leelabai Mohan Joshi & others]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. R. N. Ghuge, Adv., for the Applicants.
Mr. A.P. Tathod, Adv., for respondent nos. 2,4 to 8 and 13.

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CORAM : A. S. CHANDURKAR, J.

DATE : 20th February, 2017

01. In view of notice for final disposal issued earlier, the Civil Revision Application is heard finally with the consent of learned counsel for the parties.

02. The original defendant nos. 2 and 3 in Regular Civil Suit No. 22 of 2014 are aggrieved by the order passed by the trial Court below Exh.11 dismissing their application that was filed under provisions of Order-VII Rule 11 (d) of the Code of Civil Procedure, 1908 [for short "the Code"].

03. It is the case of non-applicant nos. 1 to 8 that they are in possession of agricultural lands bearing Survey No. 154/3 and 169/3. These lands were initially owned by one Laxmibai who executed a Will and

bequeathed these properties to Shri Kesharaj Maharaj Sansthan, a Public Trust. It is further pleaded in the plaint that a lease was granted of these lands in favour of one Bansilal Sharma and after his death in the year 1983, his legal heirs continued in possession. It is pleaded that one of the legal heirs of said Bansilal Sharma had sought to surrender tenancy in favour of the Trust; but these proceedings were held to be illegal. It is then pleaded that the defendant nos. 4 and 5 were giving threats to the plaintiffs and on that basis they filed the aforesaid suit seeking permanent injunction so as to restrain the defendants from disturbing their possession.

04. The applicants herein filed an application below Exh.11 under provisions of Order-VII Rule 11 (d) of the Code. It was stated that as the plaintiffs were claiming through the original tenant, the issue as regards inheritance of tenancy could not be decided by the Civil Court. It was further stated that prior permission of the Asstt. Charity Commissioner had not been obtained before filing the suit. This application was opposed by the original plaintiffs and by the impugned order dated 6th August, 2015, the trial Court rejected the said application.

05. Shri R.N. Ghuge, learned counsel for the applicants, submitted that considering the provisions of Section 124 of the Maharashtra Tenancy & Agricultural

Lands Act, 1958 [for short “the said Act”], the Civil Court had no jurisdiction to go into the question of alleged tenancy of the plaintiffs. The entire basis for seeking the relief of injunction depended on the answer to the question of alleged tenancy. He submitted that as the Civil Court had no jurisdiction to go into said issue, the plaint was liable to be rejected under provisions of Order-VII Rule 11 (d) of the Code. He submitted that merely by seeking the relief of injunction simplicitor, the jurisdiction of the Civil Court could not be invoked when the possession was sought to be protected by claiming tenancy rights. Relying upon the judgment of the Division Bench in **Bhagwanrao Jijaba Auti Vs. Ganpatrao Mugaji Raut & another** [1987 (3) Bom. C.R.258], he submitted that though the suit was for permanent injunction alone, the issue of tenancy was liable to be framed. He, therefore, submitted that the Civil Court erred in rejecting the application filed by the applicants. He also sought to derive support from the following decisions:-

[a] **Saleem Bhai & others Vs. State of Mah. & others** [(2003) 1 SCC 557],

[b] **Shriram Mandir Sansthan @ Shri Ram Sansthan Pusda Vs. Vatsalabai & others** [1999(1) Mh.L.J. 321],

[c] **Sarda Education Trust Vs. Nandulal Vishwanath Tate & others** [2000 (1) Mh. L. J. 1],

[d] **N. V. Srinivasa Murthy & others Vs.**

Mariyamma (dead) by proposed LRS & others [(2005) 5 SCC 548], and

[e] T. Arivandandam Vs. T.V. Satyapal & another [(1977) 4 SCC 467],

He, therefore, submitted that the application was liable to be allowed.

06. Shri A.P. Tathod, learned counsel for the Non-applicant Nos. 2, 4 to 8 and 13, supported the impugned order. It was submitted that there was no provision in law by which the suit of the present nature could not be entertained or filed before the Civil Court. If the cognizance of such suit was not barred in law, the plaint was not liable to be rejected. He submitted that the trial Court rightly found that the application moved by the applicants was liable to be rejected.

07. I have heard the learned counsel for the parties at length.

08. Since the applicants seek rejection of the plaint under provisions of Order-VII Rule 11 (d) of the Code, it is only the averments in the plaint that have to be taken into consideration while deciding such application. In the plaint, the plaintiffs have stated that they as legal heirs of one Bansilal Sharma who was tenant of the lands in question were in cultivating possession of the same. Their possession was being threatened by defendant nos. 4 and 5 and on that basis, the suit came

to be filed. On a plain reading of the plaint, it cannot be said that cognizance of the suit of such a nature is barred by any law. The provisions of Section 124 of the said Act bar the jurisdiction of the Civil Court to settle, decide or deal with any question which has to be settled, decided or dealt with by the authority under the said Act. It is well settled that if an issue involving tenancy arises in such a suit, the same is required to be referred to the competent authority under Section 125 of the said Act. This itself implies that in a suit, an issue of tenancy could arise and if the same arises, it has to be referred to the tenancy Court. It is one thing to say that suit of such nature is not maintainable at all and it is another thing to state that the issue of tenancy cannot be decided by the Civil Court and it has to be referred to the tenancy Court. Hence, the plaint is not liable to be rejected under provisions of Order-VII Rule 11 (d) of the Code.

09. In *Bhagwanrao Auti* [supra], the Division Bench decided the question referred to it as to whether it was necessary to frame the issue of tenancy at the instance of either of the parties in a suit simplicitor for permanent injunction. It was held that in such suit, it would be necessary to frame the issue of tenancy either at the instance of the plaintiff or defendant. This decision does not support the submissions as urged on behalf of the applicants. At the most, if such issue is framed, the same is liable to be referred to the tenancy Court under

Section 125 of the said Act.

Considering the aforesaid position, the other decisions relied upon by the learned counsel for the applicants do not support his case. As it has been found that the plaint is not liable to be rejected under provisions of Order-VII Rule 11 (d) of the Code, the order passed by the trial Court refusing to do so does not suffer from any jurisdictional error.

10. By observing that it is open for the applicants, if so advised, to seek framing of an issue of tenancy and thereafter its reference to the tenancy Court, the Civil Revision Application stands dismissed with no order as to costs.

Judge

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