

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.93 of 2016

Abhaykumar s/o Lalchand Shah
Vs.
Sk.Jangu Sk.Husain and 2 others.

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

Court's or Judge's Orders

Shri M.G.Sarda, Adv. for applicant.
 Shri S.V.Sohoni, Adv. for non-applicants

CORAM : A.S.CHANDURKAR, J.
DATE : 27.02.2017

By the present civil revision application, the defendant in R.C.S.No.65/2013, challenges the order dated 28.11.2016 passed by the Trial Court rejecting the application filed by him under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908.

Shri M.G.Sarda, learned counsel for the applicant by relying upon the averments made in the plaint of the suit filed by the non-applicants, submitted that the proceedings initiated by them before the Tenancy Authorities have culminated by holding that the defendant had no right to purchase the suit property. He submitted that even referring the issue of tenancy to the Tenancy Court would not serve any purpose in view of aforesaid adjudication. He, therefore, submitted that order on the application filed by the applicant below Exh.13 deserves to be set aside and the said application deserves to be allowed. He placed reliance upon the judgment in case of

Thakubai Maruti Tupe & others Vs. Ankush Hiran Magar and others reported at **1991(2) Mh.L.J.1465** in support of his submissions.

Shri S.V.Sohoni, learned counsel for the non-applicants supported the impugned order and submitted that the plaint has not been shown to be barred by law. He submitted that the only relief sought by the plaintiffs was of permanent injunction for protecting their possession and therefore the suit was maintainable.

I have heard learned counsel for the parties at length and I have perused the documents filed on record.

The Trial Court after referring to the provisions of Sections 124 and 125 of the Maharashtra Tenancy Act, 1958 (for short, the said Act), has held that what is barred is the jurisdiction to settle, decide or deal with any question that has to be settled, decided or dealt with by the Tenancy Court. It has then found that no declaration has been sought by the plaintiffs and the suit is for simplicitor injunction. The provisions of Sections 124 and 125 of the said Act do not bar filing of the suit in which some issue is required to be settled, decided or dealt with by the Tenancy Court. It is only the jurisdiction of Civil Court to entertain and decide such issue that is barred. It therefore cannot be said that the Trial Court committed any error while rejecting the said application.

As regards the submission that the proceedings before the Tenancy Court have attained finality, the said fact is disputed by the learned counsel appearing for the non-applicants. In any event that would be a matter to be considered after the Trial Court frames an issue in that

regard and decides to proceed under the provision of Section 125 of the said Act. The decision relied upon by the learned counsel for the applicant is after adjudication of the civil suit on merits. It considers the question whether the finding of the Agricultural Land Tribunal is binding on the Civil Court or not. The said judgment therefore does not assist the case of the applicant.

Hence, I do not find any case made out for interference in revisional jurisdiction. By clarifying that the Civil Court shall decide the suit in accordance with law without being influenced by any observations made in this order, the Civil Revision Application is dismissed. No costs.

JUDGE

Andurkar