

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

914 WRIT PETITION NO. 6485 OF 2015

UDHAV DATTATRAYA YADAV AND ANOTHER
VERSUS
PANDIT RAGHUNAT DHAGE AND OTHERS

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Advocate for Petitioners : Mr. S. S. Deogude, h/f Mr. P. D. Suryawanshi.
Advocate for Respondent No.1 : Mr. Vivek Vasantrao Bhavthankar.

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CORAM : **V. K. JADHAV, J.**
DATE : 24th January, 2018.

ORDER:

. The Petitioners / original Defendant Nos.5 and 6 filed an application Exhibit 56 in Special Civil Suit No.84 of 2012 for framing additional issue regarding the tenability of the suit. The Trial Court by impugned order dated 6th April, 2015, rejected the said application Exhibit 56. Hence, this writ petition.

2 The learned counsel for Petitioners / original Defendant Nos.5 and 6 submits that the Respondents / original Defendant Nos.1 to 3 are not the absolute owners of the suit property. They were declared tenants under the Hyderabad Tenancy and Agricultural Lands Act and as per the provisions of the said Act, the transfer of the land without prior permission of the Collector is prohibited. The learned

counsel submits that the suit itself is not tenable and the issue regarding its tenability required to be framed. However, the learned Judge of the Trial Court has not considered the said application and rejected it erroneously.

3 The learned counsel for Respondent / original Plaintiff submits that the original owners of the suit property i.e. Defendant Nos.1 to 3 have executed an agreement of sale in respect of the suit property in favour of Respondent / Plaintiff. However, instead of executing the sale-deed, the original owners i.e. Defendant Nos.1 to 3 in the suit, sold the said suit property to the present Petitioners and in collusion with each other, Defendant Nos.1 to 3 and the present Petitioners have instituted Regular Civil Suit No.616 of 2007 and effected the compromise in the said suit. The Respondent / original Plaintiff after knowing the aforesaid illegal compromise, instituted the present suit seeking declaration in respect of the said compromise and also for specific performance of contract alongwith the consequential relief. The learned counsel submits the Petitioners who are also claiming to be the purchasers of the suit property, have not given reference to the provisions of the Hyderabad Tenancy and Agricultural Lands Act and so far as the transaction entered by original Defendant

Nos.1 to 3 in favour of the Respondent / original Plaintiff, raised the point about the maintainability of the suit. The learned counsel submits that it is well settled that for executing the agreement of sale, no such permission is required and even the decree of specific performance can be granted with condition to secure the permission from the competent authority. The learned counsel submits that the application Exhibit 56 is vague even without mentioning the proposed issue. The learned Judge of the Trial Court has rightly rejected the application. No interference is required.

4 On careful perusal of the contents of the application Exhibit 56, I find that there are vague averments in the said application with regard to the declaration under Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act. It has not been mentioned in the said application as to in whose favour the said declaration has been made. Even otherwise, the permissions as contemplated under the provisions of the Hyderabad Tenancy and Agricultural Lands Act is not required in case of execution of the agreement of sale and the Trial Court may take care of the same, if the suit is instituted seeking relief of specific performance of contract, by imposing certain conditions. It further appears from the contents of the application Exhibit 56 that

even the Petitioners have not proposed the issue which required to be framed as an additional issue. I do not find any fault in the impugned order. There is no merit in this writ petition. Hence, the following order:

ORDER

- I. The writ petition is hereby dismissed. No costs.
- II. The Respondent / Plaintiff is at liberty to file an application before the Trial Court for expeditious hearing of the suit.
- III. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]

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