

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9522 OF 2017

MADHAV MARIBA JADHAV AND ANOTHER
VERSUS
BHIMRAO MOHANRAO KADAM AND OTHERS

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Advocate for Petitioners : Shri Bora Satyajit S.
Advocate for Respondents : Shri Katneshwarkar P.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 04, 2018

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PER COURT :-

1. The petitioners are original defendants 1 and 4 in RCS No.10 of 2010, wherein, the plaintiffs are claiming recovery of possession of lands Gut No.264/B/1 admeasuring 1 Hectare 2 Ares and land Gut No.264/A/1 admeasuring 2 Hectares 75 Ares.

2. These petitioners moved an application Exhibit 128 on 18.3.2017, praying for the recasting of issue No.3, which has been cast on 19.9.2011. Contention is that an issue of tenancy is involved and as such, the trial Court would have no jurisdiction to entertain the said suit in view of the specific bar under Section 99-A of the Hyderabad Tenancy and Agricultural Lands Act, 1950. By the impugned order dated

5.7.2017, application Exhibit 128 has been rejected by the trial Court, concluding that at the stage at which the suit is today, there is no semblance of tenancy issue involved in the matter.

3. Shri Bora, learned Advocate for the petitioners has strenuously criticized the impugned order on the basis of the pleadings of the parties. He points out that the plaintiffs have specifically pleaded in paragraph No.4 of the plaint that the agreement to sell should be cancelled and the suit lands should be given to the defendants on lease for three years as against the earnest money of Rs.50,000/-. He then points out from paragraph No.6 of the plaint that the plaintiffs contend that they demanded the possession of the suit lands as the lease term was completed. He, therefore, submits that it is the plaintiffs who had taken up the issue of tenancy in the form of an oral agreement.

4. He then points out paragraph Nos.5 and 6 of their written statement, wherein, the contention of the plaintiffs has been denied. He, therefore, submits that the jurisdiction of the trial Court would be ousted in view of the tenancy issue

involved and as such, an issue as regards tenancy be framed and then the matter be referred to the Tenancy Court. He further submits that the issues are to be framed in the light of the pleadings of the parties.

5. Shri Katneshwarkar, learned Advocate for the original plaintiffs submits that the contents of paragraph No.4 of the plaint pertain to an alleged meeting that took place in between the litigating sides six days prior to the Padwa of 2004. The discussion was that the agreement to sell should be cancelled and the suit lands can be given on lease basis for three years to the defendants. This discussion was with regard to a future course to be adopted. It is not in relation to events that have already occurred and the said contention cannot be construed to mean that it is a narration of the events that have taken place. He further submits that the trial Court has framed an issue as to whether there was any such agreement and if so proved, whether there was an oral lease between the parties. As of today, he submits that there is no tenancy issue involved.

6. He then refers to the contents of paragraph No.5 of the Written Statement of these petitioners wherein they have

specifically denied that any meeting took place six days prior to the Padwa of 2004. It is denied that any discussion took place. It is also denied that any agreement was arrived at to cancel the agreement to sell and resort to a lease in lieu of the earnest amount of Rs.50,000/-.

7. I find from the above that the plaintiffs have narrated the discussion in a meeting that they purportedly had with the defendants. A prospective course was to be charted in the said meeting. The defendants have vehemently denied the very meeting and have also denied that there was any agreement to work out an oral lease.

8. Considering the above, these defendants who have denied the existence of any lease, can only be said to have shrewdly taken up a stand of tenancy so as to delay the proceedings before the trial Court. It is surprising that when they have denied the very meeting as well as the oral lease, they are now demanding the framing of an issue with regard to tenancy and are attempting to invoke Section 99A of the Tenancy Act so as to have the matter referred to a tenancy court from where they can take the issue forward on a

different branch of litigation.

9. Considering the above and keeping in view that the suit is at a fag end pursuant to the recording of oral evidence, I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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