

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

942. WRIT PETITION No. 12611 of 2018

Govind Vithoba Marathe (died)
through legal representatives and others ... Petitioners
Versus
Visalad Wani Panch Trust, Taloda ... Respondent

Mr. A.S. Sawale, Advocate for petitioners.

Coram : N.M. Jamdar, J.

Date : 21 November 2018.

ORAL ORDER :

1. By this writ petition, the petitioners have challenged the order passed below Exhibit No. 297 in Regular Civil Suit No. 32 of 1980 dated 27 September 2018 by the learned Civil Judge (Junior Division), Taloda District Nandurbar, rejecting the prayer for staying the hearing of the suit till the decision of the proceedings before the Maharashtra Revenue Tribunal, Aurangabad, is concluded. They have also sought framing of an issue as regards tenancy and sending the same to the Tenancy Court. The learned Civil Judge has rejected the application considering that the petitioners had sought an

amendment of the written statement by incorporating the pleading regarding deemed purchaser, which came to be rejected and the same issue cannot be raised again.

2. As regards staying of hearing of the suit is concerned, it has to be noted that the suit is filed in the year 1980 and it is still pending. Merely because the petitioners contend that there are some connected proceedings, hearing of the suit, which is pending for last 38 years, cannot be stayed. As regards the issue of tenancy is concerned, it is the case of the petitioners that the amendment to the written statement was not necessary as the issue arises from the pleadings of the plaint itself. The learned Counsel submitted that even though the amendment was rejected, it is of no consequence since pleadings are present and it is settled that the Civil Court cannot decide the issue of tenancy.

3. Firstly, if the pleadings were inclusive then the petitioners ought not to have moved an application. Amendment application was rejected as far back in the year 1993. It is clear that by another method the petitioners are trying to achieve the same end by filing the present petition. Considering the long standing pendency of the suit, I am not inclined to stay further proceedings of the suit. The

learned Judge was not in error when the learned Judge held that as the amendment application has been rejected, the same issue cannot be now raised.

4. However, during the hearing of the suit, the learned Civil Judge comes to the conclusion that it has no jurisdiction to decide the particular question, which needs to be decided by any other competent authority as per law, it is always open to the learned Civil Judge to adopt the course of action referring the matter to the competent Court.

5. With this clarification, the writ petition is disposed of.

N.M. Jamdar, J.