

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 444 OF 2016
WITH
CIVIL APPLICATION NO.897 OF 2016
IN
SECOND APPEAL NO. 444 OF 2016**

Sadhu Ambaji Kolekar ...Appellant
Versus
Mahadev Ambaji Kolekar (Since deceased)
through Legal Heirs
Jayshree Jagannath Malgunde & Ors. ...Respondents

Mr.Sachin Chavan for the Appellant.

Mr.Umesh Pawan for Respondent Nos.1A to 1F, 2, 3,4,5 and 6

Mr.Rohan Surve for Respondent Nos.7A to 7C.

CORAM : M. S. SONAK, J.

DATE : 24th FEBRUARY 2018

P.C.

1. Heard the learned counsel for the parties.

2. Mr.Chavan, the learned counsel for the appellant submits that the following substantial questions of law arise in this appeal :-

(a) Whether the Civil Court had any jurisdiction to decide the issue of tenancy in respect of at least some of

the properties, in respect of which partition came to be applied for.

(b) Whether the suit for partition, *inter-alia* tenanted properties was at all maintainable without impleading the landlord as a party ?

(c) Whether the suit for partition was bad for non-joinder of necessary party i.e. one of the sister ?

3. Mr.Chavan, submits that this appeal is pressed in respect of the properties at Serial Nos.2,3 and 5 described in paragraph 1 of the plaint. He submits that the appellants do not question a decree of partition in respect of the properties at Serial Nos.1,4,6 to 8 at paragraph 1 of the plaint.

4. Mr.Chavan, submits that properties at Serial Nos.2,3 and 5 are tenanted properties of which, the appellant, claims exclusive tenancy. The issue as to whether the respondents-plaintiffs were also the tenants at least to the extent of 2/3rd share of these properties, could never have been decided by the Civil Court in view of the provisions of the Section 85 of the Maharashtra

Tenancy and Agricultural Land Act. He relies on *Ishwargouda & Others Vs/ Mallikarjun Gowda & Others (2009-1-SCC-626)* and *R.Ravindra Reddy & Ors. V/s. H.Ramaiah Reddy & Ors. (2010-3-SCC-214)* to submit that the jurisdiction of the Civil Court stands excluded when it comes to deciding issues of tenancy which are required to be decided by the authorities constituted under the Tenancy Act. Besides Mr.Chavan submits that in such a suit, the landlord is a necessary party because he is in a best position to state as to who is really the tenant in respect of the properties in question.

5. Finally, Mr.Chavan submits that one of the sister was never made a party and this position is fatal to a suit seeking partition.

6. Mr.Rohan Surve, the learned counsel for the respondent No.7 not only supports the submissions made by Mr.Chavan but points out that the respondent No.7-sister, in her written statement, in the alternate, had submitted that she was entitled to a share in terms of Section 3 of Hindu Women's Right to Property Act 1937. He submits that the decrees of partition are liable to be set aside or in any case, the share of respondent No.7 is liable to be suitably enhanced.

7. Mr.Umesh Pawar, the learned counsel for the plaintiffs as well as some of the defendants (all of whom are now impleaded as respondents) submits that the partition with regard to 1/3rd rights in the tenanted properties is not even disputed by the appellant. He points out that there were other tenanted properties, which were in the exclusive names of some of the plaintiffs. The claim for exclusive tenancy in respect of such properties was specifically given up since, it was a case of all the parties that they are joint tenants in respect of all the tenanted properties which were subject matter of the suit. He submits that as if this is not sufficient, the appellants as well as respondents, jointly filed proceedings against the landlord with respect to all such properties, in which, they admitted that they were joint tenants in respect of such tenanted properties. He submits that the two Courts have relied upon the admissions in the subsequent suit and therefore, there is absolutely nothing perverse in the findings of facts recorded by the two Courts.

8. Mr.Pawan submits that the issue of non-joinder of the sister was never raised in the written statement in the Trial Court. He submits that the sister, expired without leaving behind any issues and therefore, such issue was rightly never raised by any of the

parties. For all these reasons Mr.Pawar submits that no substantial questions of law involved in this appeal, which is therefore, liable to be dismissed.

9. Upon due consideration of rival contentions, perusal of the record as well as the judgments and decrees made by the Trial Court and the Appeal Court, it does appear that no substantial question of law are involved in this Appeal.

10. In the context of the provisions of the Section 85 of the Tenancy Act, it cannot be said that the issues raised in the suit were issues which were exclusively triable by the authorities under the Tenancy Act. In the case of *Ishwaragouda & Others (Supra)* the authorities under the Tenancy Act had already ruled that one of the parties was exclusive tenant in respect of the suit property. It is in this context the Hon'ble Apex Court held that the Civil Court had no right or jurisdiction to question such finding of the tenancy Tribunal.

11. In *R. Ravindra Reddy & Others (Supra)* Hon'ble Apex Court has held that the issue as to whether the suit land was agricultural land and the party claiming to be occupancy tenant was in possession of the same or not are issues which have to be

exclusively decided by the authorities under the Karnataka Land Reforms Act, 1961 and the jurisdiction of the Civil Court to decide such issues, is therefore barred. Such issues do not arise in the present case.

12. In the present case, the two Courts, have relied upon the proceedings initiated jointly by the appellants as well as the respondents against the landlord, in which, they clearly admitted the status of the joint tenancy. In such circumstances, no issue, exclusively triable by the Tenancy Courts, arose in this matter. Accordingly, it cannot be said that the Civil Court lacked jurisdiction in the matter.

13. The issue of non-joinder the landlord is entirely irrelevant. This is more so because both the appellants and the respondents themselves instituted proceedings against this landlord on the basis that they are joint tenants in respect of the properties in question. The two Courts have also taken into consideration the admitted position as regards 1/3rd right in the very properties and held that in respect of the balance 2/3rd, there is ample evidence on record to suggest joint tenancy. Further, neither the Trial Court nor the Appeal Court has actually made a decree for partition in

respect of tenancy properties.

14. On the issue of non-joinder of the sister, no substantial question of law arises because such an objection was not even raised in the written statement. At this stage therefore, there is nothing to reject the submission made on behalf of learned counsel for contesting respondent that his sister died issue less. In any case, the appellant is not at all the proper relator to raise an issue of this nature at this belated stage.

15. The learned counsel for the appellant submits that in the suit there was no relief of injunction prayed for. Despite this the Trial Court and the Appeal Court, has issued such injunction. In this case, the ad-interim injunction was in operation during the pendency of the suit. The injunction is only in the context of restraining the parties from interfering in the partitioned shares. This was a routine consequential relief granted by the Trial Court and confirmed by the Appeal Court. The grant of such relief does not raise any substantial question of law.

16. For all the aforesaid reasons, this Appeal is dismissed since, it involves no question of law, much less, substantial question

of law.

17. At this stage the learned counsel for the appellant seeks for continuation of the interim relief granted on 01st August 2016. The interim order is continued for the period of six weeks from today, subject to the condition that the parties do not create any third party rights or part with possession of the properties in their possession.

18. The Civil Application does not survive and the same is disposed of

(M. S. SONAK, J.)