

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

WRIT PETITION NO. 9510 OF 2017

Avinash Sambhaji Jadhav & Ors.	...	Petitioners
V/s.		
Kiran Ramchandra Boravake & Ors.	...	Respondents

Mr.Surel S. Shah for the Petitioners.
Mr.K.P. Shah for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioners and the Respondents.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 3rd July, 2017 passed by 3rd Jt. Civil Judge Junior Division, Malshiras, thereby rejecting the application Exhibit-17 filed by the Petitioners for framing the issue relating to the tenancy rights and referring the same for its decision to the Revenue Authorities.

3] It is submitted by learned counsel for the Petitioners that the Respondent No.1 has filed the suit for injunction contending *inter-alia* that since last 65 years, he is in possession of the suit land as sub-tenant and present Petitioners are causing obstruction to his possession without any reason. He has also sought the relief of injunction restraining the present Petitioners from creating third party interest in the suit land on the count that his possession in the suit land as a tenant needs to be protected.

4] In view of this specific plea of tenancy raised by the Respondent in the suit itself, the Petitioners filed an application before the trial Court at Exhibit 17, requesting the trial Court to frame the necessary issue to that effect under Section 9A of C.P.C. and to make reference thereof under Section 85A of the Bombay Tenancy and Agricultural Lands Act to the tenancy authorities.

5] This application was, however, resisted by the Respondent No.1 and the trial Court rejected the said application only on the ground that in the suit for simpliciter injunction as the nature of possession is not relevant, the issue of tenancy is also not relevant and

accordingly, it was held that the Civil Court has jurisdiction to entertain the suit.

6] For challenging this order of the trial Court, learned counsel for the Petitioners has placed reliance on the judgment of the Division Bench of this Court in the case of *Bhagwanrao s/o.Jijaba Auti V/s. Ganpatrao s/o.Mugaji Raut & Anr.*, [(1987) 3 BomCR-258], wherein exactly the same question was referred for consideration to the Division Bench of this Court as to “*whether in a suit simpliciter for permanent injunction, it is necessary to frame a issue of tenancy either in favour of the Plaintiff or the Defendant, as the case may be?*”. While answering this question, it was held that,

“We are, therefore, of the opinion that while temporary injunction can be granted without referring the question of tenancy to the Tenancy Court, a relief of permanent injunction on merit cannot be granted in a suit simpliciter for permanent injunction, unless an issue is raised, referred and decided by the Tenancy Court in accordance with the provisions of the Tenancy Act.”

7] In view of this unequivocal legal position, the finding given by the trial Court that as the suit is simpliciter for injunction, the issue of tenancy is irrelevant, cannot be sustainable and this being the only reason given by the trial Court for rejecting the application filed by the Petitioners, the impugned order passed by the trial Court needs to be quashed and set-aside.

8] In the present case, it is also pertinent to note that, the Respondent himself has in the plaint come up with the case that his possession in the suit land is that of a tenant or sub-tenant and has sought reliefs of declaration and injunction on that basis. In view thereof, in order to prove his possession as a tenant, the issue of tenancy becomes relevant under Section 85 of the Bombay Tenancy Act. Therefore, such issue is required to be framed and needs to be referred to the Tenancy Authorities for its decision.

9] Accordingly, the Writ Petition is allowed. The impugned order passed by the trial Court is set-aside. The application filed by the Petitioner is allowed and the issue, "*Whether Respondent No.1 proves that he is in possession of the suit land as a tenant?*" is framed.

10] The trial Court is directed to refer the said issue for decision to the Tenancy Authorities in view of Section 85(A) of the Bombay Tenancy and Agricultural Lands Act.

11] At this stage, it is submitted by learned counsel for both the parties that, the order of status-quo passed by the trial Court in respect of possession of the Respondent No.1 over the suit land is in operation till today. The said order of status-quo is extended till the decision of the Tenancy Authorities on the issue referred.

12] The Tenancy Authorities are directed to decide the said issue as expeditiously as possible and preferably within six months from the receipt of the order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]