

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

903 WRIT PETITION NO.10191 OF 2018

SUBHASH BALKRUSHNA PARDESHI AND ANOTHER
VERSUS
BABURAO AMBADAS SURYAWANSHI AND OTHERS

...

Advocate for Petitioners : Mr. Kasliwal Ajit D.
Advocate for Respondent Nos.1 & 2 : Mr. Amol S. Gandhi

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**CORAM : P.R. BORA, J.
DATED : 12th JULY, 2019.**

PER COURT:-

. The writ petition is heard finally with consent of the learned counsel appearing for the parties.

2. The order dated 06.06.2018 passed by 3rd Joint Civil Judge, Junior Division, Vaijapur below application Exhibit-68 in R.C.S. No.492 of 2011 is challenged in the present petition. The present petitioners are the original plaintiffs. They have filed the aforesaid civil suit seeking permanent injunction against the respondents restraining them from interfering with the possession of the plaintiffs over agricultural land bearing gut no.230 admeasuring 2 acre 26 gunthas, which the plaintiffs claimed to be in their possession in capacity of the protected tenants. The respondents have disputed the contentions as are raised in

the plaint.

3. The respondents filed an application at Exhibit-68 thereby, praying for framing preliminary issues. The said application was opposed by the petitioners-plaintiffs. The learned Trial Court after having considered the submissions advanced by the learned counsel appearing for the parties, has passed the following order, which is impugned in the present petition:

ORDER

1. *Application is allowed.*
2. *Issue No.1 i.e. Does the plaintiffs proves that they are protected tenant of suit property? is referred to Tenancy Court.*
3. *Issue letter to Tenancy Court along with copy of plaint, Written Statement.*
4. *Party shall appear before Tenancy Court on 12-7-2018, Parties to supply all necessary document to Tenancy Court."*

4. Shri Kasliwal, the learned counsel appearing for the petitioners has assailed the impugned order mainly on two grounds. The learned counsel submitted that despite there being any specific prayer for referring the matter to the Tenancy Court, the Trial Court at its own has passed the order thereby, referring the dispute to the Tenancy Court. The learned counsel further submitted that without taking

any hearing and giving an opportunity to the parties concerned to adduce evidence, even on the preliminary issues, the Trial Court could not have passed any such order. The learned counsel further submitted that the petitioners-plaintiffs have placed on record the documents evidencing that the suit property is in their possession in capacity of the tenants since last many decades and they are declared as protected tenants in the said property. The learned counsel submitted that the dispute as has been raised by the defendants was liable to be decided by the Civil Court without referring the matter to the Tenancy Court and as such, has prayed for setting aside the impugned order.

5. Shri Gandhi, the learned counsel appearing for the respondents-defendants has supported the impugned order. The learned counsel has relied upon the judgment of the division bench of this Court in the case of "**Bhagwanrao s/o Jijaba Auti Vs. Ganpatrao s/o Mugaji Raut & Another, 1987 (3) Bom.C.R. 258**". The learned counsel submitted that the facts involved in the present case are similar to the facts in the present matter and the ratio applied in the said judgment would squarely apply to the facts of the present case. The learned counsel in the circumstances, prayed for dismissal of the writ petition.

6. I have carefully perused the suit plaint, the written statements filed by the defendants, the application filed at Exhibit-68, the say filed on the said application by the petitioners-plaintiffs and the order passed by the Trial Court, which is impugned in the present petition. In view of the judgment of the division bench of this Court relied upon by Shri Kasliwal, in the case of "**Shri Pravin Pandurang Patil Vs. Executive Engineer, Pradhan Mantri Gram Sadak Yojana, 2013(1) ALL MR 256**", it appears to me that before passing the impugned order, the learned Trial Judge must have given an opportunity of hearing and even the permission to adduce necessary evidence restricted to the preliminary objections raised, to the parties to the lis.

7. In the circumstances, without going into the merits of the objections and contentions raised by the petitioners and the respondents in the present petition, I deem it appropriate to pass the following order:

ORDER

- i) The order dated 06.06.2018, impugned in the present petition is set aside.
- ii) The matter is remitted to the Trial Court to decide the application afresh by giving opportunity of hearing and if necessary by permitting the parties to adduce necessary

evidence restricted to the preliminary issues and pass the appropriate order on merits and in accordance with law.

iii) The writ petition is allowed in the aforesaid terms.

(P.R. BORA, J.)

Mujaheed//