

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13346 OF 2018

Chaganlal Raichand Oswal .. Petitioner
Versus
Bhimabai Santu Gavade & Ors. .. Respondents

Mr. Pradeep Patil with Revati Tatkare for petitioner
Mr. Sunil Karandikar for respondent No.16

CORAM : M.S.KARNIK, J.

DATE : 16th January 2019.

P.C.

The challenge in this petition is to the order dated 4th May 2018 passed by the Maharashtra Revenue Tribunal, (for short MRT). The petitioner who is revision applicant before the MRT filed an application before the MRT under Order VI Rule 17 of the Code of Civil Procedure, 1908. According to the petitioner, he is the power of attorney holder of the tenants in the respective lands. Therefore, according to him, while filing revision application, the nomenclature in the cause title should have been in the name of respective tenants through power of attorney holder i.e. the petitioner herein.

2] Mr. Patil, learned Counsel for the petitioner submits that this was a formal amendment which should have been allowed by MRT. According to him, the Tribunal has adopted a hyper technical approach in rejecting the application for amendment. Mr. Patil submits that in any case, if the petitioner who is claiming through the tenant, is brought on record in his place, no prejudice would be caused to the respondent herein. It is only that now the petitioner wants to bring the tenant on record as the applicant through the petitioner being his Power of Attorney holder.

3] Mr. Karandikar, learned Counsel for the respondents on the other hand submits that the MRT was absolutely justified in rejecting the application for amendment. The approach of the MRT cannot be said to be hyper-technical. Mr. Karandikar submits that all through out the proceedings, it has been the stand of the petitioner that the petitioner has acquired rights from the tenants and that he should be considered as tenant in respect of the property in dispute. Mr. Karandikar also relied upon the order dated 15th June 2015 passed by the MRT wherein it is recorded thus:-

“Even though this proceeding shows that this is a group of matters Rev.No.9/2010 to Rev.13/2010, record and proceeding is received other than Rev.No.10/2010. Perusal of the judgements of the first appellate forum below and the draft of revision memo, it reveals that the claim of the revision applicant is that he has acquired the rights from the first respondent under the instrument and a case is tried to be made out that as the tenancy rights acquired by the first respondent, whose status is not under dispute, he is claiming as the rights are acquired, he be considered as the tenant in respect of the property in dispute. Per Tribunal, this proposition on the part of Applicant is alien to the tenancy laws. In view of this, even though certain orders are passed by the predecessor, on the first hearing of the applicant, counsel to satisfy that under the Act, present Maharashtra as amended, the tenancy rights of the tenants can be assigned under the instrument of transfer. In substance, whether the revision filed by the revision applicants are maintainable under the provisions of the Tenancy Act of 1948. Parties are put to notice that only after recording finding on this legal issue, further directions will be issued thereafter.”

Mr. Karandikar also relied upon the order dated 29th June 2015, the relevant portion of which reads thus:-

“In addition to the directions given on 15th June, 2015, it is made clear that the applicant to satisfy about the maintainability of these proceedings in the light of observations of the Bombay High Court in the matter of Bhaskar Bhagwan Deshpande Vs. Dattatray Narsing Deshpande, 1993 BCJ 626 and Anant Trimbak Sabnis Vs. Vasant Pratap Pandit A.I.R. 1980 Bom. Page 69 and in the matter of Vasant Pandit Vs. Dr. Sabnis 1994(3) SCC page 481.”

4] Having considered the submissions of the learned Counsel for the parties, I am of the opinion that no error can be found with the view taken by the Tribunal in rejecting the application for amendment. All through out the case of petitioner was that he has acquired rights from the original tenants and that he may be considered as tenant in respect of the property in dispute. It is only during the course of revision proceedings and more so, when the objection to the locus of petitioner was raised, that the present application is filed seeking amendment in the cause title for pursuing the revision in the capacity of power of attorney holder of tenants. No doubt, some of the tenants having filed cross objections and the same being pending before the MRT, the Tribunal shall obviously decide the same on their own merits and in accordance with law. However, insofar as the request of the petitioner to permit him to pursue the revision application in a completely different capacity as power of attorney holder of tenant, cannot be considered, as all through out the petitioner has taken a stand that he has acquired rights through the tenants under an agreement.

5] In these circumstances, I do not find any error in the

order passed by the Tribunal. The impugned order does not, therefore, call for any interference. The petition stands rejected. Needless to mention that all other contentions of both parties before the MRT are kept open.

(M.S.KARNIK, J.)