

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11353 OF 2015**

Mr. Chandrakant Shahajirao Khandve .. Petitioner

Versus

Mr. Nitin Madan Nagarkar & Ors. .. Respondents

Mr. N.V. Khaladkar for petitioner.

Mr. S.M. Gorwadkar, Senior Counsel I/b Mr. Sujay H. Gangal for
respondent No.1

CORAM : K.K. TATED, J.

DATE : 28 JANUARY 2019.

P.C:-

. Heard learned Counsel for the parties.

2. By this writ petition under Article 227 of the Constitution of India, petitioner/original defendant No.2 challenges the order dated 03.10.2015 passed by the trial Court rejecting defendant No.2's application below Exhibit-119 in Special Civil Suit No.704 of 2013.

3. In the present proceedings, respondent/original plaintiff filed Special Civil Suit No.704 of 2013 before the Court of Civil Judge, Senior Division, Pune at Pune for declaration that the sale deed dated 10.02.2011 executed by defendants in favour of defendant No.51 was illegal, null and void and not binding on the plaintiff. In that suit, earlier the defendant No.51 filed application below Exhibit-85 holding that Civil Court has no jurisdiction to try and entertain the said suit. That application below Exhibit-85 was

rejected by the 5th Additional Judge, Small Causes Court, Pune on 12.07.2013 holding that the Civil Court has jurisdiction to try and entertain the said suit.

4. Thereafter, the petitioner original defendant No.2 filed application under Section 85A of the Bombay Tenancy and Agricultural Lands Act, 1948 for referring the issue of tenancy to the revenue authorities with following prayers :

“a) All above referred issues referred in para-6 of this application may be referred by this Hon'ble Court to the Competent Authority i.e. Revenue Authority established as per provisions of BTAL Act for determination;

b) Proceeding in the present suit including hearing of temporary injunction application at Ex. 5 may be stayed till the Competent Authority (Revenue Authority) determine the above referred issues and submit its decision to this Hon'ble Court;

OR ALTERNATIVELY

Proceeding in the present suit including hearing of temporary injunction application at Ex.5 may be stayed till final disposal of Appeal No.27/2013 filed by the plaintiff before Sub - Divisional officer Haveli, challenging 32 M certificate issued on 17/04/1971.

c) Any other order in the interest of equity, justice and conscience may also be passed in favour of these Defendants.”

5. The trial Court after considering the submissions made by learned Counsel for the petitioner and the documents on record held that petitioner failed to make out any case for referring the issue to the revenue authorities and dismissed the petitioner's application on 03.10.2015. Being aggrieved by the said order, petitioner preferred present writ petition.

6. Learned Counsel for the petitioner submits that the Courts below erred in coming to the conclusion that petitioner/original defendant No.2 failed to make out any case in support of their application below Exhibit-119. He submits that in the present proceedings indirectly the respondent original plaintiff is challenging the 32 M certificate issued by the authority under Bombay Tenancy and Agricultural Lands Act, 1948. Therefore, the Civil Court has no jurisdiction to try and entertain the suit. He submits that though the respondent-original plaintiff made prayer in the suit for declaration that the sale deed dated 10.02.2011 is not binding on him, but actually the petitioner is seeking to set aside the 32 M Certificate issued by the revenue authority and therefore the impugned order is required to be set aside.

7. It is to be noted that in the present proceedings, bare reading of the plaint shows that plaintiff is seeking declaration to the extent that sale deed dated 10.02.2011 executed by the defendants in favour of defendant No.51 is illegal, null and void and not binding on them. Apart from that earlier the defendant No.51 filed application below Exhibit-85 for preliminary issue "Whether the Court has jurisdiction to try and entertain this suit". That application was rejected by the trial Court on its own merits holding that the Civil Court has jurisdiction to try and entertain the suit in the present proceedings. Considering these facts and the reasoning given by the trial Court in its impugned order, I do not find any reason to interfere in the well reasoned order passed by the trial Court.

8. Hence, writ petition stands rejected.

9. No order as to costs.

10. At this stage, learned Counsel for the petitioner submits that ad-interim relief granted by this Court on 19.11.2015 to continue for further period so that if petitioner wants to take up this matter in Higher Court. Considering the submission made by the learned Counsel for the petitioner and in the interest of justice, ad-interim relief granted earlier by this Court to continue till 28.02.2019.

(K.K.TATED, J.)