

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2141/2019

Dr.Syd.Yusuf Kadri s/o Syd.Said Ahmad Kadri
Vs.

Sk.Blal Sk.Imam(Dead) through Legal Heirs & others.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri V.K.Paliwal, Advocate for petitioner.
Shri H.R.Gadhia, Advocate for respondent nos. 1-A, 3 to 5-A.

CORAM : A.S.CHANDURKAR, J.
DATED : July 18, 2019.

The challenge raised in the present writ petition is to the order passed below Exhibit 161 whereby the trial Court has refused to strike out issue no.2 that was framed in the suit filed by the petitioner.

The petitioner is the original plaintiff and the suit property is land from Survey No.53 admeasuring about 36 acres and 18 gunthas. It is the case of the plaintiff that the said land is owned by the Public Trust and that it has been issued an exemption certificate. The plaintiff claims that on 17.06.1996 the said land was leased out to the plaintiff after which he came into possession as a tenant. The plaintiff learnt that earlier there was an agreement to sell the said land to the defendant no.2 and the said defendant no.2 was claiming interest in the land. Proceedings under Section 120 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short, 'the said Act') were filed against the defendant no.2 but the same were compromised. Since threats were being given by the defendant no.2, it is the case of the plaintiff that he was constrained to protect his possession. In the meanwhile, the defendant no.2 had also filed proceedings under Section 36 of the said Act seeking restoration of his possession. It was the stand of the defendant

no.2 that the surrender of tenancy was invalid. The plaintiff on 08.07.1996 filed a suit for declaration that the defendants were not in possession and that the plaintiff's possession should not be disturbed by the defendants. Written statement was filed by the defendants and on the pleadings of the parties, the trial Court framed the issues on 22.02.2003 below Exhibit 84. Issue no.2 reads thus :

2. *“Whether the plaintiff prove that the defendant no.2 has delivered the possession of suit field voluntarily to the said Trust on 17.06.1996 ?”*

Thereafter the tenancy proceedings were contested between the parties and as a result of orders passed therein, the plaintiff moved an application below Exhibit 161 in which it was prayed that as the Maharashtra Revenue Tribunal had decided the revision application, it was not necessary to adjudicate issue no.2. Accordingly by that application, it was prayed that issue no.2 be deleted. This application was opposed by the defendants and by the impugned order, the trial Court observed that issue no.2 was not connected with the aspect of tenancy and that the Civil Court had jurisdiction to decide the same. Since it was found that such issue arose in the light of pleadings of the parties, the application below Exhibit 161 came to be rejected. Being aggrieved the plaintiff has challenged the said order.

Shri V.K.Paliwal, learned counsel for the petitioner submitted that in view of the fact that the Maharashtra Revenue Tribunal on 19.12.2017 had decided the revision application by dismissing the same, it was not necessary for the Civil Court to go into the question as to whether the defendant No.2 had voluntarily delivered possession of the suit field to the Trust on 17.06.1996. Since the question with regard to tenancy and surrender of the tenancy were within the jurisdiction of the Tenancy Authorities and those proceedings had been finally decided, it was not necessary to adjudicate issue no.2. The same would have

resulted in unnecessary wastage of time of the Court. The trial Court therefore ought to have allowed the application below Exhibit 161 and by observing that issue no.2 was not connected with the aspect of tenancy, the trial Court committed an error.

Shri H.R.Gadhia, learned counsel for the respondent no.1-A, 3 to 5-A supported to the impugned order. According to him, the issues as framed were based on the pleadings of the parties, they were required to be adjudicated. The issues framed in the year 2003 below Exhibit 84 and adjudication of the tenancy proceedings had no relevance for seeking deletion of issue no.2. The application in question was moved after about 15 years and the trial Court was justified in rejecting the said application. He referred to the averments in the plaint and submitted that according to the plaintiff, the cause of action has itself arisen on 06.07.1996 and the suit as filed was based on that cause of action. He further submitted that even otherwise, the order dated 19.12.2017 passed by the Maharashtra Revenue Tribunal did not conclude the controversy. Hence, the writ petition was liable to be dismissed.

I have heard the learned counsel for the parties at length and have perused the pleadings on record. In the plaint it is the case of the plaintiff that he had obtained a lease of the suit property from the Trust on 17.06.1996 and he had been put in possession on the same day. In paras 6 and 7, it has been pleaded that the defendants through the defendant no.2 had delivered the possession of the suit field at about 4.00 pm on 17.06.1996 to the plaintiff. In para 11 also there is reference to a possession receipt executed in favour of the plaintiff. In the written statement as filed the defendants have asserted that the possession of the suit field was never handed over to the plaintiff at any point of time. It is in the light of these pleadings that the trial Court proceeded to frame the issues which included issue no.2. In the light of respective pleadings of the parties, it is seen that the burden to prove that issue is on the plaintiff since it was his case that he was put in possession on 17.06.1996 by the

defendants. The pleadings of the parties therefore give rise to issue no.2.

In the application at Exhibit 161, the plaintiff has stated that since the Maharashtra Revenue Tribunal on 19.12.2017 had dismissed the revision application, it was not necessary to decide the question of possession in the light of issue no.2. It is to be noted that the order dated 19.12.2017 is the subject matter of the challenge at the instance of the defendants who claim shares in the said land. In other words, that order has not yet attained finality as it is challenged in Writ Petition No. 1138/2018 (Sayyad Siraj Ali Sakhavat Ali & three others Vs. Khanka-A-Kadariya Trust & others). That writ petition has been decided today and after setting aside the order dated 19.12.2017, the proceedings have been remanded to the Maharashtra Revenue Tribunal for fresh adjudication. Even otherwise, it is seen that issue no.2 does not refer to any aspect of tenancy. What is only to be adjudicated is whether the plaintiff has proved that the defendant no.2 had voluntarily delivered the possession of the suit field to the Trust on 17.06.1996. Any finding on issue no.2 would not have any bearing on the aspect of tenancy. There is also no bar to decide such issue by the Civil Court. Since the issue no.2 has been framed on the basis of pleadings of the parties and there is no element of tenancy involved therein, it is found that the trial Court was justified in refusing to strike out issue no.2. Even otherwise in view of the provisions of Section 124 of the said Act the aspect of tenancy cannot be gone into by Civil Court and issue no.2 does not require the Civil Court to consider the question of tenancy. It merely revolves on the aspect of the defendant no.2 delivering possession of the suit field on 17.06.1996.

In that view of the matter, I do not find any reason to interfere with the impugned order passed below Exhibit 161 or the consequential order passed below Exhibit 169 seeking review of that order. The writ petition stands dismissed. No costs.

The proceedings in R.C.S.No.94/1996 are expedited and the same be decided by the end of December 2019.

JUDGE

Andurkar.