

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2672/2017

Ramkrishna V. Shende Thru LR's & anr.

..VS..

Madhukar A. Bhandarkar & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. V.N. Chitnavis, Advocate for the petitioner(s)
Shri S.M. Pande, Advocate for the respondent nos. 1 and 2

CORAM : Z.A.HAQ, J.

DATED : 13/06/2019

Heard.

In the civil suit filed by the respondents, the defendants had filed application under Section 9A of the Code of Civil Procedure (Exh. 12) raising objection that the Civil Court is not having jurisdiction to decide the civil suit. The defendants contended that the statutory ownership in respect of the suit land is conferred on them as per Section 43 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "the Act of 1958"), and therefore the Civil Court cannot grant declaration as sought by the plaintiffs that the plaintiffs are the owner of the suit land and the Civil Court cannot grant decree directing the defendants to handover possession of the suit land to the plaintiffs.

The learned trial Judge has recorded that the reliefs sought by the plaintiffs in the civil suit are for declaration of their ownership and permanent injunction

restraining the defendants from disturbing possession of the plaintiffs over the suit land. The prayer clauses of the plaint filed by the plaintiffs are as follows:-

“It is, therefore, most humbly and respectfully prayed that this Hon'ble Court be pleased:-

(i) to pass a decree of declaration declaring that the plaintiffs are the only legal heirs of the deceased, Domi Atmaram Bhandarkar and they are the only legal owners of the property left behind by their deceased mother, Domi Atmaram Bhandarkar, bearing survey nos. 61 and 62, Patwari Halka No. 63, mouza Sukli, Tahsil and District Nagpur, to the extent of 10 acres.

(ii) further be pleased to declare that the plaintiffs are the owners of the property admeasuring 10 acres out of survey nos. 61 and 62, mouza Sukli and thereby, the defendants be directed to hand-over the possession to the plaintiffs and the decree for possession be passed to that effect in their favour.

(iii) further be pleased to restrain the defendants, their agents, servants or any person acting through them, permanently, from disturbing the peaceful possession of the plaintiffs by passing a decree of permanent injunction in their favour.

(iv) further be pleased to order the enquiry into the mesne profit as deems fit by this Hon'ble Court.

(v) *further be pleased to saddle the cost of this proceeding upon the defendants.*

(vi) *further be pleased to grant any other relief deemed fit and proper in the facts and circumstances of the case.”*

At the outset, I find that the application (Exh. 12) as filed by the defendants was mis-conceived. Looking to the reliefs sought by the plaintiffs, it cannot be said that the Civil Court has no jurisdiction to entertain and decide the civil suit.

At the time of hearing, the learned advocate for the petitioners – defendants submitted that as per Section 125 of the Act of 1958, jurisdiction of the Civil Court to decide any issue which is required to be decided by the competent authority under the Act is taken away. This submission made on behalf of the defendants is in consonance with the law, however, the learned advocate for the petitioners – defendants has not been able to point out that the issue of title is required to be decided by any authority under the Act of 1958.

The advocate for the respondents – plaintiffs has pointed out that the issues which are required to be decided by the authorities under the Act are mentioned in Section 100 of the Act of 1958 and Section 100 does not lay down that the issue of title is required to be decided by any authority under the Act of 1958.

After considering the nature of controversy and going through the impugned order, I find that the reasons recorded by the learned trial Judge for dismissing the application (Exh. 12) are proper and cannot be faulted with.

It cannot be said that the learned trial Judge has committed any illegality or error of jurisdiction which necessitates interference by this Court in the extra-ordinary jurisdiction.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Ansari