

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

WRIT PETITION NO. 5152 OF 2016

Shri. Ramkrushna Sadaship Nimkharde

vs.

Sau. Sumanbai w/o. Shrikrushna Dharmal and another

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

Court's or Judge's orders

Shri. M. V. Mohokar, counsel for petitioner.
Shri. V. B. Bhise, counsel for respondents.

CORAM : MANISH PITALE J

DATED : 06/12/2019

By this writ petition, the petitioner (original plaintiff) has challenged concurrent orders passed by the two Courts below rejecting prayer for temporary injunction made on behalf of the petitioner.

2. The petitioner had filed a suit for declaration and permanent injunction bearing Regular Civil Suit No.69/2011 before the Court of Civil Judge Junior Division, Telhara (Trial Court). The nature of declaration sought in the aforesaid suit is that it be declared that the defendants, respondents herein, do not have any right title or interest to disturb peaceful possession of the petitioner in the suit property before expiry of a lease deed, said to have been executed by the respondents in favour of the petitioner. The permanent

injunction sought by the petitioner is also on the same lines to the effect that the respondents be restrained from disturbing possession of the petitioner in the suit property, prior to expiry of the lease period. The Trial Court as well as the Appellate Court i.e. Court of District Judge, Akola have concurrently held that when the petitioner is claiming relief of declaration and permanent injunction on his claim of holding a lease in his favour in respect of the suit property and therefore, claiming on the basis of his status as tenant, the Trial Court has no jurisdiction as per the provisions of the Maharashtra Tenancy and Agricultural Land (Vidarbha Region) Act, 1958, particularly, Section 124 thereof. It has been held by the two Courts below concurrently that when the Civil Court in the present case cannot be said to have jurisdiction to entertain the suit filed by the petitioner, there would be no question of grant of temporary injunction in favour of the petitioner. On this basis, the application for temporary injunction has been rejected by the Trial Court and the said order has been confirmed by the Appellate Court.

3. The learned counsel appearing for the petitioner submitted that if the Courts below found that there was an issue pertaining to the status of the petitioner as tenant arising in the present case, under Section 125 of the aforesaid Act, the issue ought to have been referred to the Competent Authority under the provisions of the said Act.

4. On the other hand, the learned counsel appearing for the respondent No.1 referred to Section 124 of the aforesaid Act and relied upon the said provision to contend that the Courts below had correctly held that there was no jurisdiction in the Trial Court in the present case to entertain the suit and that therefore, the application for temporary injunction could not be granted. The learned counsel for respondent No.1 had no objection to the issue regarding tenancy being referred to the competent Court under Section 125 of the aforesaid Act. But, it was pointed out that as per the said provision, the suit filed by the petitioner for declaration and permanent injunction before the Trial Court was required to be stayed in terms of Section 125(1) of the aforesaid Act.

5. A perusal of the plaint and the pleadings filed on behalf of the petitioner would show that the whole claim for declaration and permanent injunction is based on the claim of the petitioner of holding a lease for the suit property and therefore, claiming on the basis of his status as a tenant in the said suit property. Therefore, when an issue regarding tenancy of agricultural land has arisen in the present case, the concurrent orders passed by the two Courts below rejecting the prayer for temporary injunction cannot be found fault with. But, at the same time the insistence of the petitioner that the Civil Court ought to have invoked Section 125 of the aforesaid Act needs to be appreciated.

6. A perusal of the said provision shows that if an issue required to be settled decided or dealt with by the Competent Authority under the said Act arises in a suit instituted before the Civil Court, the issue needs to be referred to the Competent Authority and the suit before the Civil Court shall remain stayed.

7. In view of the above, this Court is of the opinion that the limited prayer made on behalf of the petitioner before this Court can be granted. Accordingly, without interfering in the concurrent orders passed by the two Courts below, the Trial Court is directed to frame appropriate issue regarding question of tenancy that arises in the present case on the basis of the claims made by the petitioner, to the Competent Authority under the provisions of the said Act. The suit filed by the petitioner shall remain stayed in terms of the Section 125(1) of the aforesaid Act.

8. The Civil Court to take appropriate action in terms of direction given above within a period of one month from today.

9. The writ petition is disposed of in above terms.

JUDGE