

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

WRIT PETITION NO.6477/2019

Smt.Shobha Anandrao Khergade and others Vs. Ashok Chhotelal Walmik

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

Court's or Judge's Orders.

Shri Amit Kukday, Advocate for petitioners.

CORAM : A.S.CHANDURKAR, J.

DATED : NOVEMBER 05, 2019

The challenge raised in the present writ petition is to the order dated 14.08.2019 passed by the trial Court below Exhibit 25 by which the application moved by the defendants for framing an additional issue with regard to bar of the Civil Court under Section 124 (2) of the Maharashtra Tenancy of Agricultural Lands (Vidarbha Region) Act, 1958 (for short, 'the said Act') has been rejected.

The original plaintiff-the respondent herein, has filed a suit for declaration that the plaintiff has legal right over the suit property on the basis of the Gift Deed dated 03.12.1969. According to the plaintiff, the said suit property was donated to his grandfather-Lalsingh by the said gift deed and hence the plaintiff had right to the same. It is further pleaded that the defendants were in illegal possession of the suit property. Besides the relief of declaration, further relief of permanent injunction has been sought. In the written statement it was pleaded that the predecessor of the defendants was statutory tenant of the suit property and the land was allotted to the said predecessor under the provisions of the said Act. The trial Court framed various issues at Exhibit 18. The defendants moved an application stating

therein that the suit was not maintainable in view of the bar under Section 124(2) of the said Act. The trial Court while rejecting that application has observed that no question of tenancy was required to be decided as the purchase certificate had already been issued to the predecessor of the defendants.

Shri Amit Kukday, learned counsel for the petitioners submitted that since the defendants have raised a plea with regard to tenancy in their written statement and as the plaintiff has sought for declaration that he had legal right over the suit property, it was necessary to frame the said issue as proposed. Though the purchase certificate has been issued to the predecessor, the question would arise as to the jurisdiction of the Civil Court to entertain the suit. Hence the impugned order was liable to be set aside.

As per the averments in the plaint, the plaintiff seeks declaration that he has legal right over the suit property on the basis of gift deed dated 03.12.1969. On the other hand it is the case of the defendants that a purchase certificate was issued to the predecessor of the defendants and the question which is required to be adjudicated by the Tenancy Court is sought to be agitated in the suit. The additional issue has rightly not been framed by the trial Court. It has been observed that it was not necessary to go into question of maintainability of the suit since the purchase certificate was already issued in favour of the predecessor of the defendants. No question as to the tenancy rights of the defendants fell for adjudication.

I therefore do not find any reason to interfere with the impugned order. The writ petition is therefore dismissed. No costs. The trial Court shall proceed to decide the suit on its own

merits in accordance with the law without being influenced by any observations made in this order.

JUDGE

Andurkar.