

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

910 CRA NO.31 OF 2021

SHIVAJI SAMBHAJI HARAL AND OTHERS
VERSUS
BHANUDAS KESU PAWAR AND OTHERS

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Mr. N.B. Narwade, Advocate for the applicants.

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CORAM : **N.J. JAMADAR, J.**

DATE : 25th March 2021.

PER COURT :-

1. Heard the learned Counsel for the applicants.
2. The challenge in this application is to an order passed by the learned 3rd Joint Civil Judge, Senior Division, Ahmednagar on an application (Exh.25) in R.C.S. No. 399/2021, preferred by the applicants – original defendants, under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (the Code) for rejection of the plaint on the ground that the suit is barred by the provisions of Section 85 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act), whereby the said application came to be rejected.
3. The substance of the application before the trial Court was that though the plaintiff had instituted the suit for perpetual injunction, yet, from the averments in the plaint, it becomes evident that the plaintiff claimed that the tenancy rights of the plaintiff were confirmed and crystalized in various

tenancy proceedings and that the said proceedings were decided against the defendants. Since the claim of the plaintiff is based on the determination of tenancy, in view of the bar under Section 85 of the Tenancy Act, the plaint is liable to be rejected.

3. The plaintiff / respondent resisted the application.

4. The learned Civil Judge was of the view that though there was a reference to the previous proceedings between the parties before the Authorities under the Tenancy Act, yet the suit was primarily for perpetual injunction. The plaintiff did not seek declaration of tenancy. In contrast, the plaintiff was seeking the relief of perpetual injunction as defendant Nos.1 to 5, the applicants herein, had threatened to cause obstruction to the possession of the plaintiff on 18th July 2019. Thus, the bar under Section 85 of the Tenancy Act was not attracted.

5. The learned Counsel for the applicants urged that the aforesaid approach of the learned Civil Judge is not in consonance with the settled legal position. Taking the Court through the averments in the plaint, the learned Counsel for the applicants would urge that the entire plaint is replete with averments as regards the multiple proceedings between the parties before the Tenancy Authorities. In the circumstances, the trial Court ought not to have recorded a finding that no issue of tenancy would arise for determination in the suit.

6. Indeed, there are averments in the plaint as regards the various proceedings between the parties before the

Authorities under the Tenancy Act. However, on a meaningful reading of the plaint, which is required to be resorted to while considering a prayer for rejection of the plaint under Order VII Rule 11 of the Code, it becomes abundantly clear that the plaintiff had adverted to those proceedings as historical facts. The thrust of the plaintiff's claim is that despite the issue of tenancy having been concluded in his favour and he being in settled possession of the suit land, the defendant Nos.1 to 5 (applicants herein) threatened to cause obstruction to his peaceful possession and enjoyment. Hence, the suit for perpetual injunction.

7. In my considered view, the learned Civil Judge correctly appreciated the nature of the suit. It does not appear that the bar under Section 85 of the Tenancy Act is attracted.

8. Resultantly, no inference is warranted in exercise of revisional jurisdiction as there is neither jurisdictional error nor procedural defect nor exercise of jurisdiction in a perverse or unreasonable manner.

9. The revision application, thus, does not deserve to be entertained. Hence, the application stands dismissed.

(N.J. JAMADAR, J.)