

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3421 OF 2013

Sakharam M. Patil and ors.

...Petitioners

V/s.

Balasaheb Sadu @ Sadashiv
 Patil and ors.

...Respondents.

Mr. Yuvraj Narvankar a/w. Mr. Adwait Agashe for the Petitioners.
 Mr. Surel S. Shah for the Respondents.

CORAM : N.R. BORKAR, J.
DATE : 21.08.2021.

P.C. :

1] Rule. Rule is made returnable forthwith with the consent of parties.

2] This petition takes an exception to the order dated 28.09.2012 passed by the learned 4th Joint Civil Judge, Senior Division, Kolhapur below Exhibit-98 in Regular Civil Suit No. 768 of 2009.

3] The petitioners herein have filed a Suit simplicitor for injunction against the respondents in relation to the agricultural land bearing Gat Nos. 1127, 1261 and 1263 of Mauje-Koge, Taluka - Karvir, District - Kolhapur.

4] The Petitioners and Respondents are close relatives. Their ancestors Sadashiv Patil, Dadu Patil and Mahadu Patil were co-tenants of the suit land.

5] According to the Petitioners, Sadashiv was cultivating one half share and Dadu and Mahadu were cultivating one fourth share each. The Petitioners are the legal heirs of Dadu and Mahadu and the respondents are the legal heirs of Sadashiv. According to the Petitioners they are cultivating the share of Dadu and Mahadu after their death. The Petitioners allege that respondents are not allowing them to cultivate their share in the suit lands and thus sought injunction against them.

6] The respondents in their written statements have stated that owners of the land are not made party to the suit and thus the suit is bad for non-joinder of necessary parties. It is further stated that the Petitioners are claiming themselves to be the tenants, however, they never obtained such declaration from the Competent Authority under Bombay Tenancy and Agricultural Lands Act (for short "Tenancy Act"), nor such declaration is sought in the present suit. The respondents have stated that the Petitioners were never tenants of the suit lands, nor they were ever in possession of any portion of the suit lands.

7] The Petitioners after filing of written statement filed an application for amendment of Plaint at Exhibit - 98. By the said application, the Petitioners sought permission to implead the owners of the suit land as party/defendants to the suit. They further sought permission to amend the pleadings. They have stated that they be declared as tenants. The trial court rejected the application at Exhibit-98 by the impugned order.

8] According to the trial Court, the declaration which the Petitioners have sought by the proposed amendment can be granted by Mamlatdar under Section 70(b) of the Tenancy Act and the jurisdiction of the Civil Court in that respect is barred.

9] I have heard learned counsel for the Petitioners and learned counsel for Respondents. The learned counsel for Petitioners submits that the trial Court ought not to have judged the merits of the amendment sought to be incorporated at the time of deciding the amendment application. It is submitted that to avoid multiplicity of the judicial proceedings, the trial Court ought to have allowed the amendment in question. In support of the submission, learned counsel for the Petitioners has relied upon the Judgment reported in **(2002) 7 SCC 559 in the case of Sampath Kumar vs. Ayyakannu and Another.**

10] On the other hand, learned counsel for Respondents submits that the trial Court has rightly rejected the amendment application. It is submitted that the Civil Court has no jurisdiction to grant declaration which the Petitioners have sought for. It is submitted that the proposed amendment changes the nature of the suit. Accordingly, it is submitted that no interference is called for in the impugned order. In support of the submission, learned counsel for Respondents has relied upon the Judgment reported in **(2009) 10 SCC 84 in the case of Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Others.**

11] According to the respondents, their father Sadashiv was the sole tenant of the suit land. According to them the Petitioners, on the basis of bogus documents got their names recorded in the revenue record of the suit land as tenants.

12] It is, thus, apparent from the pleadings of the parties that the dispute is between the co-tenants and not the land owners and tenants. In such situation, the trial Court ought not to have examined merits of the amendment at the time of deciding amendment application. It is also not understood as to why the amendment seeking permission to implead the owners of the suit land as party defendants to the suit, was rejected.

13] Considering facts and circumstances, the trial Court was not justified in rejecting the amendment application. In the result, following order is passed :

- a] Writ Petition is allowed.
- b] The order impugned dated 28.9.2012 passed by the Trial Court below Exhibit-98 in Regular Civil Suit No.768 of 2009 is set aside.
- c] Application at Exhibit-98 is allowed.

[N.R.BORKAR, J.]