

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2534 OF 2019

SULOCHANA JANARDHAN MALVE AND OTHERS
VERSUS
DNYANDEO VITTHAL CHAUDHARI

Mr.Abhishek Kulkarni, Advocate for the petitioners.
Mr.R.A.Tambe, Advocate for the respondent.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 24, 2022

PER COURT :

1. Heard the learned Advocate for the petitioners and the learned Advocate for the respondent.

The petitioners are the original plaintiffs who filed RCS No.115/2009 seeking a declaration of ownership of the suit property and also prayed for possession.

On receipt of summons, the defendant appeared in the suit and denied the title of the plaintiffs. The issues came to be settled in the suit and the burden was cast upon the plaintiffs by way of issue No.1 to prove whether his relationship with the defendant is of a tenant and whether he establish that he is a landlord ? It is pertinent to note that prior to the institution of the suit, respondent No.1 filed RCS

No.252/2004 (721/2004) seeking a declaration of ownership and a declaration to the effect that the Lease Deed between the parties, executed on 23/05/1968, is not a Lease Deed but it is a sale deed.

2. The defendant moved an application for amendment of his written statement and proposed to insert paragraph No.8A and 8B therein, wherein he made a reference to this suit i.e. RCS No.252/2004 and pleaded that since the suit was withdrawn, there exist a relationship of landlord and tenant, which has now been established. He also raised an objection about the jurisdiction of the Court to determine the said issue, since it will have to be made over to the Revenue Court to determine that he was a tenant. Therefore, the return of plaint was sought on the said ground. The amendment as prayed for was allowed by the learned Judge on 23/04/2016 but worth it to mention that this amendment was never carried out and the pleadings in the written statement were not amended in terms of the proposed amendment and specifically paragraph No.8-B which was sought to be inserted.

3. The plaintiffs moved an application on 05/03/2018, seeking deletion of issue No.1, which cast a burden on the plaintiffs to prove the relationship between the plaintiffs and defendant, but this

application came to be rejected under the impugned order dated 08/01/2019.

The rejection is on the ground that though the amendment application was allowed, the amended pleadings are not brought on record, necessarily the plea in form of an admission of relationship between the plaintiffs and defendant is not on record. Since the written statement, which has been filed by the defendant deny such a relationship, the issue No.1 deserves a determination as the main issue in the suit and its relation has rightly been rejected.

Upholding the impugned order since the specific stand of the defendant is in the form of denial of relationship of landlord and tenant, issue No.1 being necessary for effective adjudication of the suit in the background of the relief sought therein, the writ petition is dismissed.

4. Needless to state that since the suit of the plaintiffs is filed in the year 2009, every endeavour shall be made by the learned Trial Court to conclude the proceedings in the said suit within a period of one year from today.

(BHARATI H. DANGRE, J.)