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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9039 OF 2021

Vitthal Hira Rathod & Another

PETITIONERS

VERSUS

Kallu Krushan Rathod and Others

RESPONDENTS

.....

Mr. Milind Patil with Mr. K.J. Ghute Patil, Advocates for petitioners
Mr. S. G. Chapalgaonkar, Advocate for respondent No.1

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE :8th SEPTEMBER, 2022

ORDER :

1. Being aggrieved by the order passed by learned Second Joint Civil Judge, Junior Division, Omerga below Exhibit-105 in Regular Civil Suit No. 122 of 2013, the petitioner has filed present writ petition under Article 227 of the Constitution of India.

2. Respondent No.1 – original plaintiff has filed the suit seeking declaration and injunction against the petitioners and other defendants to the extent of the suit property owned by him, which is purchased by him from the original owner. The suit property consists of southern portion of land survey No. 269 to the extent of 92 Are, southern portion of survey No. 270 to the extent of 1 Hectare 38 Are, southern portion of survey No. 271

to the extent of 1 Hectare 48 Are and southern portion of survey No. 274 to the extent of 1 Hectare 61 Are. The petitioners and other defendants resisted the suit by filing written statement and say.

3. The petitioners had filed application Exhibit-113 claiming rejection of the plaint, on the ground that father of the petitioners-defendant was the tenant in possession of the suit land and he had been conferred with the title of the suit property, by virtue of the tenancy law. It was also claimed that after becoming owner of the suit property by virtue of purchase deed 24th July, 1956 and on demise of father, the defendants are enjoying the suit property. The said application was rejected by the Trial Court and the rejection order is confirmed by this Court in Civil Revision Application No. 5 of 2021.

4. After the plaintiff led his evidence, the petitioners filed application Exhibit-105 under Order XIV, Rule 5 of the Civil Procedure Code praying for referring the matter to the tenancy authority to decide, whether the plaintiff proves that his father was tenant of the suit land. The said application was strongly objected by the respondent-plaintiff contending that there is no issue of tenancy involved in the present matter. The application is rejected by the Trial Court. Hence, this petition.

5. I have carefully considered rival submissions advanced by the learned advocate for the petitioners and learned advocate for the respondent-plaintiff. Perused the grounds raised in the writ petition and the annexure filed along with the petition and the citations relied on by the learned advocate for the petitioners. After considering all these aspects, this Court is of the opinion that no ground is made out by the petitioners to interfere in the impugned order.

6. Admittedly, the petitioners have purchased northern portion of survey No. 274/1 to the extent of 1 Hectare 61 Are, northern portion of survey No. 271/1 to the extent of 1 Hectare 49 Are, northern portion of survey No. 270/1 to the extent of 1 Hectare 38 Are and northern portion of survey No. 269/1 to the extent of 1 Hectare 33 Are, situated at village Jakekoorwadi, Taluka – Omerga. He, along with others, had filed Regular Civil Suit No. 22 of 1996 claiming injunction in respect of the said property against respondent No.1. The said suit was decreed with costs, by the judgment and decree dated 31st Mach, 2003.

7. Subsequently, present suit (RCS No. 122 of 2013) is filed by the respondent seeking injunction against the petitioner – defendants in respect of the suit land, which is admittedly a

different land and is southern portion of land survey No. 269 to the extent of 92 Are, southern portion of survey No. 270 to the extent of 1 Hectare 38 Are, southern portion of survey No. 271 to the extent of 1 Hectare 48 Are and southern portion of survey No. 274 to the extent of 1 Hectare 61 Are

8. The respondent – plaintiff has pleaded in the plaint that old survey Nos. 269, 270, 271 and 274 were owned by the landlord Manikrao Mohanrao Deshmukh. Father of the plaintiff – respondent was tenant of the said land. The original owner decided to sale the land to the plaintiff's father. Accordingly, necessary permission was obtained and the land was sold to the plaintiff's father for a consideration of Rs.31,000/- on 22nd December, 1982.

9. It is not in dispute that the petitioners are the owner of northern portion of the land and have purchased different portion of land which is not concerned with the suit land of the respondent – original plaintiff. In that view of the matter, the application filed by the petitioners to refer the issue of tenancy of plaintiff's father is inconsequential in the facts of the present case.

10. The Trial Court has rightly rejected the application filed by

the petitioners holding that the plaintiff's father has purchased said land after obtaining necessary permission by following due procedure and Mutation Entry No. 1133 to that effect is also recorded in favour of the plaintiff. So there is no question of framing issue of tenancy and referring it to the competent authority.

11. In view of aforesaid discussion and taking into consideration facts, pleadings in the plaint and the averments in the written statement, it is clear that there was no occasion for the trial court to frame issue of tenancy.

12. Learned advocate for the petitioner has relied on "**Noor Mohammad Khan Ghouse Khan Soudagar V/s Fakirappa Bharmappa Machenahalli**" 1978 AIR (SC) 1217, wherein it is held that the Tahsildar has exclusive jurisdiction to decide the question of tenancy and it is necessary for the High Court to refer it to the Tahsildar and there is no discretion left in the civil court.

13. In "**Bhagwanrao Jijaba Auti V/s Ganpatrao Mugaji Raut and another**" 1987 (3) Bom. C. R. 258, in the facts of that case, it is held that for deciding the issue of perpetual injunction, question as regards rights of either of the plaintiff or the defendant, as

tenant is necessarily involved and has to be decided first and said question has to be decided by the authority under the Tenancy Act.

14. In "*Shrawan Bagaji Nadre and Others V/s Arun Manikrao Kadam*" 1982 *Mh.L.J.* 777, it is held that temporary injunction granted by the Trial Court was vacated and a direction was given to the Trial Court to refer tenancy issue of the plaintiff to the tenancy court.

15. In "*Bhimaji Shankar kulkarni V/s Dundappa Vithappa Udupudi*" 1966 *AIR (SC)* 166, it is held that the authority under the Local Tenancy Act has jurisdiction to decide the question of tenancy and any question arising for determination of title, must be referred to the tenancy authority for determination.

16. These rulings are decided on different facts and they are not applicable to the facts of the present case.

17. In the result, no illegality or perversity is found in the order impugned in the petition. There is no merit in the writ petition. Writ petition is, therefore, dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE