

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6228 OF 2022

1] Vajroddin Mushoroddin Makrani
Age : 50 years, Occu. : Labour

2] Samiroddin Zahiroddin Makrani
Age : 25 years, Occu : Labour

3] Rahimoddin Zahiroddin Makrani
Age : Minor, Occu. : Education

Through under Guardianship being mother
Nasimbanu Zahiroddin Makrani
Age : 64 years, Occu. : Household,
R/o : Makrani Fali, Tal. Akkalkuwa,
Dist. Nandurbar

4] Vaseemoddin Zahiroddin Makrani
Age : Minor, Occu : Education
Through under Guardianship being mother
Nasimbanu Zahiroddin Makrani
Age : 64 years, Occu : Household
R/o : Makrani Fali, Tal. Akkalkuwa,
Dist. Nandurbar

5] Nazimoddin Badroddin Makrani
Age : 50 years, Occu : Labour

6] Salimoddin Badroddin Makrani
Age : 45 years, Occu : Labour

7] Saidoddin @ Barkiya Badroddin Makrani
Age : 43 years, Occu : Labour

8] Afzalddin Munafddin Makrani
Age : 50 years, Occu : Labour

All R/o : Makrani Fali, Akkalkuwa
Tal. Akkalkuwa, Dist. Nandurbar

.. Petitioners
(Defendants)

VERSUS

1] Abdul Latif A. Raheman Ansari
Age : 71 years, Occu : Agril,

2] Abdul Shakur A. Raheman Ansari
Age : 60 years, Occu : Agril,

Both R/o : In front of Jama Masjid,
Akkalkuwa, Tal. Akkalkuwa, Dist. Nandurbar

.. Respondents
(Plaintiffs)

...
Advocate for Petitioners : Mr. Brahme Shailesh P.
Advocate for the respondents no. 1 and 2 : Mr. C.C. Deshpande
...

CORAM : MANGESH S. PATIL, J.

DATE : 21 JUNE 2022

ORAL ORDER :

Heard. Issue notice. Learned advocate Mr. C.C. Deshpande waives service.

2. Rule. By consent, heard finally at the stage of admission.

3. The petitioners who are the defendants in a suit filed by respondents for perpetual injunction *simplicitor* submitted couple of applications, one seeking rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure and the other application (Exhibit - 22), praying to stay the suit and to refer the dispute touching the aspects of the tenancy under the Bombay Tenancy and Agricultural Lands Act ("**Tenancy Act**") to the competent authority, under section 85A of that Act. By a common order under challenge both these applications have been rejected.

4. It is apparent that the order rejecting the application under Order VII Rule 11(d) of the Code of Civil Procedure would be an order revisable under section 115 of the Code of Civil Procedure. But since it

is a common order passed on above mentioned two applications, even that order is being questioned in the very same writ petition.

5. Learned advocate Mr. Brahme for the petitioners points out that the issues are to be dealt with and are being considered and decided by the authorities under the Act are germane to the dispute in hand, *albeit* the suit is merely for perpetual injunction *simplicitor*. He submits that already the parties are before the Maharashtra Revenue Tribunal in a dispute arising out of that Act alone. The civil court cannot go into and decide those issues which can be considered by the authorities under section 85-A of that Act alone. It would have been appropriate for the trial court, therefore, to direct that the suit would stand stayed till the decisions by the authorities under the Tenancy Act reached finality. The fate of the present suit would depend upon the decisions by the authorities under the Tenancy Act. The trial court not only refused to reject plaint but has even refused to stay the suit.

6. Mr. Brahme refers to following decisions:

- i) Himatrao Ukha Mali and others Vs. Popat Devram Patil and another; 1998 (3) Bom. C.R. 680
- ii) Shri Pandurang Damodar Bhoir Vs. Shri Baddruddin Abbasbhai Patil; 2015(5) Mh.L.J. 270
- iii) Saiyyed Wase Ahmed Vs. Shegji Bhengya Padvi and others; 2022(2) Mh.L.J. 387

7. Learned advocate Mr. Deshpande for the respondents submits that the respondents have filed the suit for perpetual injunction *simplicitor*. The only issue that needs to be framed and decided in the

said suit is as to if the respondents are in settled possession of the suit property. The question of title in any case cannot be gone into in the present suit. If the respondents are found to be in settled and exclusive possession, they would be entitled to have the relief of perpetual injunction.

8. Mr. Deshpande would further submit that the question whether, in-fact, any dispute as is covered by section 85 and 85-A of that Tenancy Act arises or not is a decisive factor. The respondents are apprehending that their exclusive possession over the suit property would be disturbed. They have also filed an application for temporary injunction which is awaiting hearing and final decision before the trial court. If at such a stage, suit is directed to be stayed till the authorities decide the dispute, that would make their possession vulnerable. The purpose of filing the suit would be lost.

9. Mr. Deshpande cites the following decisions :

- i) Popat Bhimaji Sandhbor and others Vs. Rambhau Dagadu Sandhbor; 2003 AIHC 1885
- ii) Shri Pandharinath Pandurang Mate deceased by his legal heirs Shri Patil Pandharinath Mate and others Vs. Smt. Radhabai Mahadeo Mate and others; 2015(2) Mh.L.J. 597

10. I have carefully considered the rival submissions and perused the papers. Since the respondents are claiming perpetual injunction *simplicitor*, under section 38 of the Specific Relief Act, 1963, the exclusion of the jurisdiction of the civil court to decide the suit cannot be readily inferred. Section 85 and 85-A of the Tenancy Act do

not expressly or even by implication take away the jurisdiction of the civil court to decide the suit for perpetual injunction *simplicitor*. If such is the state-of-affairs, then no fault can be found with the order passed by the trial court on the application filed by the petitioner (Exhibit – 22) for rejection of the plaint.

11. So far as the scope and ambit of provisions of section 85 and 85-A of the Tenancy Act are considered, one need not delve much. The law is well settled. Jurisdiction of the civil court is barred in respect of the issues / disputes covered by section 85 and 85-A of the Tenancy Act.

12. Pertinently, admittedly, the parties are before the revenue authorities and the matter even is pending before the MRT touching the disputes pertaining to the tenancy. If all such disputes are *sub judice* and are certain to be decided in the parallel proceeding before the revenue authorities touching the question of tenancy, about which the petitioners seems to be anxious, obviously the civil court cannot and need not indulge in and scrutinize that aspect.

13. The fact to be borne in mind is that though it is a suit for perpetual injunction *simplicitor*, as has been laid down in the matter of **Anathula Sudhakar Vs. P. Buchi Reddy; (2008) 4 SCC 594**, when serious question regarding title are raised, creating a cloud on the rights being claimed by the parties, the trial court will have to even indulge in and decide the issue as to title, apart from the issue

regarding possession. Consequently, when the trial court was alive to the fact that the parties were already before the revenue authorities and disputes touching the provisions as covered by section 85 of the Tenancy Act were already pending, it would have been appropriate for the trial court to have at least partly accepted the reliefs being claimed by the petitioners by their application (Exhibit – 39) thereby deferring the decision of the suit till the disputes before the revenue authorities reached finality.

14. Obviously, the respondents also must be anxious and intending to protect their title and possession over the suit property for which they have already preferred application for temporary injunction which is awaiting hearing and decision.

15. In view of such peculiar state-of-affairs, it would be appropriate that final disposal of the suit is stayed till decision in Revision no. 55/B/2018 reaches finality, with a clarification that the trial court may proceed with interlocutory steps.

16. Writ petition is partly allowed.

17. The petition to the extent of putting up challenge to the order on application (Exhibit – 22) is dismissed. The impugned order on the application (Exhibit – 39) is modified. The actual hearing and decision of the suit shall stand deferred till the final outcome of the matter before the Maharashtra Revenue Tribunal with a clarification

that the trial court may continue to decide the application for temporary injunction (Exhibit – 39) and also any other application at interlocutory stages.

18. Rule is made absolute in the above terms.

[MANGESH S. PATIL]
JUDGE

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