

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8216 OF 2022

Arjun Narayan Patil
Age: 68 years, Occu.: Agri.,
R/o. Dongargaon, Tq.Pachora,
Dist.Jalgaon.

..Petitioner
(Original Defendant)

VERSUS

Shitalkumar Balchand Jain
Age: 51 years, Occu.: Money Lender,
R/o. Pachora, Tq.Pachora,
Dist.Jalgaon.

..Respondent
(Original Plaintiff)

...
Advocate for Petitioner : Shri Vikram R. Dhorde
Advocate for Respondent : Shri T.K.Sant

...
CORAM : M.G.SEWLIKAR, J.

DATE : 20th August, 2022

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for hearing for final disposal at the admission stage.

2. This petition is preferred against the Judgment and order passed by the learned Civil Judge, Junior Division, Pachora, Dist.Jalgaon, dated 29th June, 2022 in R.C.S. No.23 of 2012, thereby rejecting applications Exhibit-162 i.e. for framing of additional issues and Exhibit-170 i.e. for producing 7/12 extracts.

3. Facts necessary for disposal of this petition can be stated briefly thus :

Respondent - original Plaintiff filed Special Civil Suit No.428 of 2005 (subsequently numbered as R.C.S. No.23 of 2012) for declaration that the plaintiff has become owner of the suit property vide conditional sale deed dated 14th June, 1999 and also for the declaration that the right of purchase by the defendant is extinguished.

4. The allegations made in the plaint are that on 14th June, 1999, plaintiff purchased suit property for consideration of Rs.1,50,000/- by registered sale deed. It was agreed that if the amount was paid within a period of three years, the sale deed will be treated as cancelled else it will be treated as out and out sale.

5. Petitioner - original Defendant filed written statement and contended that the defendant has not executed sale deed. It was a money lending transaction. Plaintiff is not an agriculturist. He does not own agricultural implements also. It is alleged that plaintiff is a money lender.

6. Petitioner – original Defendant filed an application Exhibit-162 for framing additional issue whether the plaintiff is an agriculturist. Another application Exhibit-170 was filed vide which the plaintiff was called upon to produce 7/12 extract. These applications came to be rejected by the learned trial Court by the impugned order observing that the issues involved in the suit are whether the plaintiff is doing illegal money lending business and whether the plaintiff purchased suit property vide sale deed with a condition of re-purchase. Thus, the learned trial Court found that the issue proposed by the defendant as to whether the plaintiff is agriculturist or not is not *germane* for the decision of the suit. This order is impugned in this petition.

7. I have heard learned counsel for the petitioner and learned counsel for the respondent.

8. Learned counsel for the petitioner submits that the petitioner has specifically raised the defence in the written statement that the plaintiff is not an agriculturist. The petitioner – original defendant has contended that plaintiff is a money lender and therefore, he was not competent to purchase the suit property since he is not an agriculturist. This issue goes to the root of the matter. He placed reliance on the case of *Topa Dhenu*

Rathod Vs. Maheshkumar Shankarlal Agrawal [1996 (2) Mh.L.J., 426].

9. Learned counsel for the respondent - original plaintiff submits that the defendant did not raise this issue till the entire evidence is over. He submits that the application is filed just to prolong the litigation. This issue is not *germane* for the decision of the suit. He submits that the issue involved in the suit is whether the sale deed is out and out sale or it is the sale with a condition of re-purchase. He submits that for the decision of this issue, it is not necessary for the Court to frame issue as to whether respondent - original plaintiff is an agriculturist or not.

10. Admittedly, the sale deed in question has been executed by the petitioner - original defendant. Execution of the sale deed is not in dispute. The only question is what is the nature of the transaction. According to the respondent - original plaintiff, the transaction is of sale with a condition of re-purchase. The allegations in the plaint show that an amount of Rs.1,50,000/- was paid and conditional sale deed was executed.

11. For the purchase of the property, as per Section 63 of the Bombay Tenancy and Agricultural Lands Act, permission of the

collector is necessary. Unless the permission is obtained, the sale deed will not be a valid sale deed. For this purpose, he placed reliance on the case of *Topa Dhenu Rathod* (supra). In paragraph Nos.12 and 13 this Court held thus :

"12. In Gundaji Satwaji Shinde's, case (cited supra), the Apex Court considered section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, which is identical and pari materia with the present aforesaid section 89, and in para 6 the Apex Court observed thus :--

"6. There is no controversy that the land purported to be sold by the contracts for sale of land Exs. 82 and 83 is land used for agricultural purposes and is covered by the definition of the expression 'land' in section 2(8)(a). The plaintiff thus by the contracts for sale of land Exhibits 82 and 83 purports to purchase agricultural land. Section 63 prohibits sale of land, inter alia, in favour of a person who is not an agriculturist. If, therefore, the plaintiff wants to enforce a contract for sale of agricultural land in his favour he has of necessity to be an agriculturist. The defendant intending vendor has specifically contended that the plaintiff not being an agriculturist he is not entitled to specific performance of the contract. Therefore, in a suit filed by the plaintiff for specific performance of contract, on rival contentions a specific issue would arise whether the plaintiff is an agriculturist because if he is not, the Civil Court would be precluded from enforcing the contract as it would be in violation of a statutory prohibition and the contract would be unenforceable as being prohibited by law and, therefore,

opposed to public policy."

13. *From the aforesaid judgment of the Apex Court in Gundaji Shinde's case (cited supra), it can easily be held that section 89 of the Tenancy Act of 1958 prohibits sale of agricultural land, inter alia, in favour of a person who is not an agriculturist. It can further be said that if in a suit for specific performance of contract, the plaintiff wants to enforce an agreement of sale of agricultural land in his favour, he must be an agriculturist. Thus, when the defendant set out the plea in the written statement that the plaintiff was not an agriculturist, obviously in a suit filed by the plaintiff seeking specific performance of agreement of sale of agricultural land, he was required to show that he was an agriculturist and a decree for specific performance could only be passed if he was agriculturist, and not otherwise. The judgment of the Apex Court is thus clear and on the basis of the said judgment, it has to be held that when such a plea was set out by the defendant in the written statement that the plaintiff was not an agriculturist, in a suit for specific performance of contract filed by the plaintiff, seeking enforcement of the contract and sale of the agricultural land, the issue whether the plaintiff is an agriculturist or not, was necessarily required to be framed and by not doing that, the trial Court failed to exercise jurisdiction vested in it under law. It is the duty of the Court to cast issues arising out of the pleadings of the parties and the relevant material, and since there is a pleading of the defendant in the written statement that the plaintiff was not an agriculturist, in view of the controversy involved, such an issue was necessary to be framed."*

12. It is thus clear that Section 63 of the Bombay Tenancy and Agricultural Lands Act does not permit purchase by a person who is not an agriculturist. Section 63 reads thus:

“63. Transfers to non-agriculturists barred

(1) Save as provided in this Act -

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee,

shall be valid in favour of person who is not an agriculturist [or who being an agriculturist [will after such sale, gift, exchange, lease or mortgage, hold land] [exceeding the ceiling area] determined under the Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961] [such permission shall not be granted, where land is being sold to a person who is not an agriculturist for agriculture, purposes, if the annual income of such person from other sources is Rs.12,000 or more] or who is not an agricultural labourer;”

13. From this Section, it can be easily made out that if a person is not an agriculturist or agricultural labourer, sale in favour of such a person is invalid without prior permission from the Collector. In the case at hand, it is specifically alleged by the petitioner – defendant that the respondent – plaintiff is not an agriculturist. If the finding is returned from the Tenancy Court

that the plaintiff is not an agriculturist, the sale will be invalid. Therefore, framing of an issue as to whether plaintiff is an agriculturist is a must. The learned trial Court is, therefore, directed to frame an issue "whether plaintiff is an agriculturist". The learned trial Court thereafter shall refer the issue to the Tenancy Court for decision. After reference, the Tenancy Court shall answer the issue within six months.

14. The impugned order is set aside. Applications Exhibit-162 and Exhibit-170 are allowed.

15. With these observations, petition is disposed of. No costs.

16. Rule is made absolute.

(M.G.SEWLIKAR)
JUDGE

SPT