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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10018 OF 2018

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| 1. | Uttam s/o Bapusha Baikare
Age – 54 years, Occ – Agril | PETITIONERS |
| 2. | Deelip s/o Bapusha Baikare,
Age – 48 years, Occ – Agril | |
| | Both R/o Umerga Retu, Taluka – Jalkot
District – Latur | |
| 3. | Maroti s/o Bapusha Baikare,
Age – 48 years, Occ – Driver,
R/o More Complex, AUSA Road,
Datta Mandir, Kalika Mandir
Latur | |
| 4. | Sanjay s/o Bapusha Baikare
Age – 43 years, Occ – Agril
R/o Khadgaon Road, Near Office of
Advocate Bandgar Latur
Taluka and District – Latur | |
| 5. | Rajiv s/o Bapusha Baikare
Age – 40 years, Occ – Service
R/o School of Handicap Boys
Near Tina Kirti Oil Mill, MIDC
Latur, Taluka and District – Latur | |
| 6. | Padminibai w/o Bapusha Baikare
Age – 80 years, Occ – Agril
R/o Omerga Retu, Taluka – Jalkot
District – Latur | |
| 7. | Sarjai @ Shardabai w/o Bhimashankar Yanure,
Age – 59 years, Occ – Agril
R/o Shirur Tajband, Taluka – Ahmedpur
District – Latur | |
| 8. | Mangalbai w/o Babu Chigle,
Age – 40 years, Occ – Agril | |

R/o Handarguli, Taluka – Udgir
District – Latur

9. Vimalbai w/o Balaji Davkare
(Awalkondkar) Age – 45 years
Occ – Household R/o Shivni
Taluka and District – Latur

VERSUS

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| 1. Shriram @ Shrihari s/o Khandu Baikare
Age – 72 Years, Occ – Agril
R/o Omerga Retu, Taluka – Jalkot,
District – Latur | RESPONDENTS |
| 2. Balaji s/o Narhari Baikare,
Age – 53 years, Occ – Agril | |
| 3. Radhabai w/o Narhari Baikare,
Age – 75 years, Occ – Agril
Both R/o Omerga Retu, Taluka – Jalkot
District – Latur | |
| 4. Chandrakala w/o Shivaji Bhinge
Age – 45 years, Occ – Agril
R/o At Present Shama Nagar
Sahajani – Aurad, Taluka – Nilanga
District – Latur | |
| 5. Kamalbai w/o Raghunath Holkar
Age – 40 years, Occ – Agril
R/o Nalgir, Taluka – Udgir,
District - Latur | |

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Mr. Eknath G. Irale, Advocate for the petitioners
Mr. J. R. Patil, Advocate for respondent No.1
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th FEBRUARY, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with

the consent of the learned advocates for the parties.

2. This petition is directed against order dated 5th July, 2018 passed by the learned 3rd Joint Civil Judge, Junior Division, Ahmedpur below Exhibit-49 in Regular Civil Suit No.355 of 2014, thereby rejecting the application filed by the petitioner - defendants to transfer the suit to the Tenancy Court, as tenancy issue is framed in the suit.

3. The respondents – original plaintiffs filed the suit for permanent injunction and declaration as owners of the suit land Gut No. 249 to the extent of 1 Hectare 70 *Are*, situated at village Omerga Retu, Taluka – Jalkot, District – Osmanabad. The petitioners – defendants appeared and resisted the claim of the plaintiffs. The trial court framed issues on 23rd December, 2016. At the instance of defendants, vide order passed below Exhibit-48, an additional issue is framed i.e. *"Does the plaintiff prove that his father namely Khandu was in possession over the suit land Gat No. 249 (Sy. No. 28) to the extent of 12 Acre 27 Guntha, as tenant?"*

4. The defendants-petitioners thereafter moved application Exhibit-49 seeking to refer the suit to the tenancy court to decide the issue of tenancy. The trial court has rejected the

application. Hence present writ petition.

5. Heard learned advocate for the petitioners and learned advocate for the respondents.

6. Learned advocate for the petitioners submitted that since an issue in respect of tenancy is framed, it was incumbent on the part of the trial court to refer the said issue to the tenancy court. In view of sections 85 and 85-A of the Maharashtra Tenancy and Agricultural Lands Act (for short "said Act") the civil court has no jurisdiction to examine the question which are required to be dealt with and settled under the provisions of the said Act. In support of his contentions, he relied on **"Bhima Aba Rade V/s Thakubai Maruti Rade and Others"** 2007 (6) ALL MR 185. He submitted that the learned trial court has erred in not considering the application in the proper perspective. The impugned order, therefore, cannot sustain and the writ petition deserves to be allowed.

7. On the other hand, learned advocate for the respondents supported the impugned order. According to him, the issue of tenancy was not required to be framed in the facts of the present case. Merely because an issue is framed, it is not necessary to refer the matter to the tenancy court as the issue

of tenancy is not involved in the present matter. By relying on ***"Pulmati Shyamlal Mishra and Another V/s Ramkrishna Gangaprasad Bajpai and Others"* 1981 Mh.L.J. 321** he submits that the trial court was right in rejecting the application filed by the petitioner – defendants. According to him, Order XIV, Rule 5 of the Code of Civil Procedure empowers the court to amend or strike out issues at any stage of the trial, before passing of the decree. He, therefore, submitted that since the plaintiffs are not claiming the suit property on the ground of tenancy, the trial court was justified in rejecting the application of the petitioners.

8. It is a matter of record that the plaintiff is claiming ownership and possession over the suit property on the ground of oral partition. The issue now pertains only to the dispute between heirs of Khandu. The suit is not dealing with the issue between a landlord and tenant. The defendants are denying ownership of the plaintiffs on the ground that the suit property was exclusive property of Bapusha and, therefore, the plaintiffs have no concern with the suit land. In that view of the matter, the issue whether Khandu was tenant of the property or not has no bearing on the suit. Taking into consideration these facts, the trial court has rightly rejected the application filed by the defendants.

9. In "**Bhima Aba Rade**" (*supra*), this Court (V. R. Kingaonkar, J.) in the facts of that case held that civil court has no jurisdiction to examine the questions, which are required to be dealt with and settled under the provisions of the said Act and there is bar of jurisdiction under the provisions of section 85 of the said Act. To deal with the question, including the question whether a person is or was at any time in the past, a tenant and whether any such tenant is or should be deemed to have purchased from his landlord, the land held by him. From the pleadings of the parties and facts of the present case, it is clear that the issue of tenancy is not relevant in the matter, therefore, this ruling is of no help to the petitioners.

10. Division Bench of this court in "**Pulmati Shyamlal Mishra**" (*supra*) has observed thus-

"35.The process contemplated under Order 14 does not contemplate any trial of such issue but it does involve nipping of any such plea in the bud, if the Court, subject to any contrary decision in appeal and revision, judicially concludes against its framing and raising. This is implicit in the separate provision for framing issues and the trial thereof. This process does not thus involve any conflict between Order 14 of the Code of Civil Procedure or sections 85 and 85A of the Tenancy Act nor any question of any lack or excess of jurisdiction. Such scrupulous compliance with these provisions alone can prevent such possible abuse of its process.

36. The Court has thus a duty to examine the substance and refuse to frame and remit any such issue if the same appears to be demonstrably frivolous and mala fide. It is obviously not easy to draw a dividing line between such frivolous and mala fide pleas on the other. Facts of a given case, however, would rarely fail to furnish the required indication to the judicially trained mind. Facts of the present case, in our opinion, leave no manner of doubt that tenancy plea is a part of the fraudulent defence strategy and does not call for any remittance for trial. The approach could not have been different even if the Defendant No.5 had pleaded the tenancy specifically. The same picture would have emerged in the careful scrutiny at the preliminary stage contemplated under Order 14 of the Code of Civil Procedure.”

11. These observations support the case of the respondents-plaintiffs.

12. For the aforesaid reasons, there is no illegality or perversity in the order impugned in the present writ petition. The trial court has passed a well reasoned order and no interference is called for in the same in the extra ordinary writ jurisdiction. Writ petition is, therefore, dismissed. Rule discharged. No costs.

**[NITIN B. SURYAWANSHI]
JUDGE**