

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 1418 OF 2022

Vasudeo Gangaram Gurav & Anr. ...Petitioners
vs.
Parshuram Gangaram Gurav & Ors. ...Respondents

Mr.R.D. Suryawanshi with Suraj Naik for Petitioners.
Mr.VL. Gurav for Respondent.

CORAM : ROHIT B. DEO, J.

DATED : 21 JUNE 2022

P.C. :

1. The Petitioners are the original Plaintiffs who have instituted Regular Civil Suit 53/2019 seeking decree of partition, separate possession, declaration and perpetual injunction *qua* 42 agricultural lands (suit properties).

2. The Plaintiffs preferred an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure dated 8 August 2019 seeking injunctive relief against Defendant 1 – Respondent 1 herein *qua* the property at Serial 1 of the Schedule. The Plaintiffs asserted that on 2 April 2019, the Defendant 1 entered into an agreement of sale in favour of Defendant 4 *qua* the said property and an application seeking permission to sell the said property is pending with the Sub-Divisional Officer, Rajapur.

3. The Defendant 1 resisted the application on the premise that the said property at Serial 1 and the properties at Serial 2 to 12 are exclusively owned by the Defendant 1 in view of the certificate granted in

his favour under Section 32-M of the Maharashtra Tenancy and Agricultural Lands Act (“the Tenancy Act”).

4. The learned trial Judge was pleased to allow the application seeking temporary injunction, vide order dated 9 August 2019. The Defendant 1 challenged the said order in Miscellaneous Civil Appeal 36/2019 which is allowed by the Principal District Judge, Ratnagiri, vide judgment dated 11 January 2022.

5. The learned Appellate Court was pleased to reverse the order of the trial Judge accepting the submission of the Defendant 1 that the civil court is precluded from entertaining a submission that the tenant in whose name the certificate is issued, is not the exclusive owner and that the certificate enures for the benefit of all the members of the joint families. Presumably, the learned Appellate Court was impelled to arrive at such conclusion, since the entire focus of the arguments advanced on behalf of the Plaintiffs was to demonstrate that the certificate issued under Section 32-M is not in accordance with the statutory provisions.

6. It is not in dispute that the Defendant 1 has entered into an agreement to sell property at Serial 1 in favour of the Defendant 4 and has preferred an application under Section 43 of the Tenancy Act seeking permission to complete the conveyance. The short question which falls for consideration, is whether the learned Appellate Court was justified in interfering with the discretion exercised by the trial Judge on the premise that the civil court’s jurisdiction is ousted.

7. The learned Counsel for the Petitioners has invited my

attention to the decision in **Rajaram Mahadu Dahatonde (D) thr. LRs. Vs. Babu Mahadu Dahatonde**¹. An identical question which fell for consideration, is answered thus :

“23. The aforesaid proposition made by the learned counsel for the appellants is not at all acceptable in this case. Firstly, the bar of jurisdiction under Bombay Tenancy Act is applicable only with regard to the subject matters mentioned in the Bombay Tenancy Act. Secondly, the bar does not mean that for all purposes the jurisdiction of Civil Court is taken away. Under the Bombay Tenancy Act, the tenant's rights are hereditary. Tenancy rights can be acquired by single person or more persons or even by joint Hindu family. The disputes which are between tenant and the landlord are expected to be considered by the tenancy Court. In the present matter, the question is, whether the three properties mentioned in three certificates given under section 32-M of the Bombay Tenancy Act are joint Hindu family properties. Such dispute can be and needs to be decided by Civil Court. This is partition suit and only on the basis of certificate granted under section 32-M of the Bombay Tenancy Act defendant No.1 cannot contend that it is his self acquired property. No such inference is possible when there are facts and circumstances of the case like present one. This Court has no hesitation to hold that the dispute of the present nature cannot be dealt with under the Bombay Tenancy Act. Reliance is placed on the case reported as **2006 (2) Mh.L.J. 243 : [2006(1) ALL MR 423] (Savitra Bapu v. Rau Rama)**.

8. No contrarian view is brought to my notice.

9. Considering that the learned Appellate court clearly erred in assuming that in a partition suit, the members of the joint family are precluded from demonstrating that the property covered by the certificate

1 2016(2) ALLMR 326

is a joint family property, I have no option but to set aside the order impugned.

10. However, considering the nature of the dispute and the relationship *inter se*, and with consent of the parties, I direct that till the disposal of the suit, none of the properties mentioned in the schedule shall be alienated.

11. The order impugned is set aside and that of the learned trial Judge granting injunctive relief is substituted by the directions (*supra*). The learned trial Judge is requested to expedite the suit.

12. The writ petition is disposed of in above terms.

(ROHIT B. DEO, J.)