

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9313 OF 2013

Jagannath S/o. Kisan Pise-Patil
and others

.... Petitioners

Versus

Wajunissa @ Mujamonissa Begum
W/o. Abdul Razzak (Died)
Through L.Rs.
Manjur Ahmed S/o. Abdul Razzaq
and others

.... Respondents

.....

Mr. J.C. Badve, Advocate for the Petitioners
Mr. M.M. Patil Beedkar, Advocate for Respondent Nos.1-A to 1-H

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th MARCH, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner is challenging the order passed by the learned Civil Judge, Junior Division, Bhokardan, below Exhibit-44 in Regular Civil Suit No.102 of 2016, thereby refusing to frame issue No.6 proposed by the petitioner.

2. The suit is filed for possession of the suit property described in the plaint. The petitioners/original defendant Nos.1 to 5 appeared and opposed the suit by filing written

statement. Additional written statement is filed by the defendants on 14/11/2006, wherein they claimed to be in possession of the suit property since the month of May, 1965, which was given by Meheboobkha Budhankha to Kishan Sampat on *batai* basis, which he cultivated for the year 1965 i.e. for the year 1964-65 as tenant and given *batai* crops to Maheboobkhan Budhankha. It is further contended that Mahaboobkha has entered into contract of sale of the said suit land with Kishan Sampat on 27/12/1965 for Rs.1,200/-, and accordingly executed *Isar pawati* on 27/12/1965 in favour of Kishan Sampat after obtaining amount of Rs.1,000/-, delivered the possession of the suit land in view and in furtherance of the above contract of sale.

3. Application Exhibit-44 is then filed by the petitioners under Order XIV Rule 5 of the Code of Civil Procedure for framing 7 additional issues. The plaintiff also filed application Exhibit 31 praying to frame additional issues in respect of possession of the suit property.

4. The trial Court passed common order on below Exhibits 31 and 44, thereby allowing application Exhibit-31 and partly allowed application Exhibit-44. The petitioners are

aggrieved by partly allowing application Exhibit-44 and not framing issue No.6 proposed by them.

5. Heard the learned advocate for the petitioners and the learned advocate for the respondents. Perused the grounds raised in the petition, documents placed on record and the impugned order.

6. According to the petitioners in earlier round of litigation i.e. in Regular Civil Suit No.45 of 1974, between the same parties, issue of tenancy was framed as issue No.5. The pleadings in that suit and the present suit are identical, the trial Court ought to have framed the issue of tenancy. According to the petitioner, no prejudice would be caused to the respondents, if the said issue of tenancy is framed and referred to the Court.

7. On the other hand, learned advocate for the respondent strongly opposed the prayer contending that in absence of proper pleadings of tenancy, and any material placed on record, the application of petitioners is rightly rejected by the trial Court. In support of his submissions, he relied on *Pandu Dhondi Yerudkar Vs. Ananda Krishna Patil, 1974 Mh.L.J.548*.

8. Issue No.6 proposed by the petitioner is as follows:

"Whether the defendants prove that Kishan s/o Sampat cultivated the suit land in the year 1965 as tenant of the suit land?"

9. Having perused the averments of petitioners in additional written statement, it is clear that the main reference is given by them about cultivating the said land in the Month of May 1965 for the crop year 1965-66 as a tenant and having given *batai* crop to Maheboobkha. Further pleadings of the petitioners are to the effect that, *"The said Maheboobkha has then entered in to contract of sale of the above said entire land with Kishan s/o Sampat on dt 27-12-1965 for Rs.1200/- and accordingly has executed an ISARPAWATI on dt 27-12-1965 in favour of the Kishan s/o Sampat after obtaining the amount of Rs.1000/- from Kishan s/o Sampat in view of and in furtherance of the above contract of sale. The said Maheboobkha s/o Budhankha had also agreed to execute the registered sale deed in favour of Kishan s/o Sampat after obtaining the remaining amount of Rs.200/-. From 27-12-1965, the said Kishan s/o Sampat started cultivating the suit land till his death on the basis of above said contract of sale and accordingly his cultivation is shown in 7/12 extract. After the death of Kishan his legal heirs are in possession of suit*

land and as such their possession is liable to be protected u/s 53 of the T.P. Act. The possession of defendant Nos.1 to 5 is legal and lawful and is liable to be maintained and liable to the protected."

10. In ***Pandu Dhondi Yerudkar Vs. Ananda Krishna Patil*** (supra), learned Single Judge of this Court has held; "As frequently this question arises, a little caution is required to be exercised before the Court actually frames such an issue. Under Order 14 of the Code Civil Procedure an issue can only arise when a material proposition of fact or law is affirmed by one party and denied by the other. When a vague plea is made by the defendant contending that is made by the defendant contending that he is a tenant of the land, the Court should hesitate to frame such an issue on such a vague plea, unless the defendant is such able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. If in spite of such particulars being asked for the defendant is unable to furnish the same, the Court should not raise an issue on a vague plea that he, the defendant, is a tenant of any particular piece of land. Normally the rules of pleadings require that these particulars are the minimum particulars

which a man must furnish before he can request the Court to frame an issue as regards the claim made for tenancy."

11. Considering averments in the written statement quoted supra, it is clear that the defendant Nos. 1 to 5 asserting that they continue with the possession of the suit land in view of and in furtherance of agreement to sale dated 27/12/1965. Therefore, their main contention appears to be that their possession is liable to be protected under section 53-A of the Transfer of Property Act.

12. In the light of above, the trial Court is justified in observing that the said issue which is in respect of tenancy right of Kisan Sampat is not necessary to be framed, as per pleading of the defendants. There is no illegality or perversity in the order impugned in the present petition. The petitioners have failed to make out a case to warrant exercise of extraordinary writ jurisdiction.

13. The writ petition being devoid merit is dismissed.

14. Interim relief stands vacated.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane