

SA Pathan

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

WRIT PETITION NO.15322 OF 2022

Fazal Ahmed Nizamuddin Ghansar ... Petitioner
V/s.
Vrishali Balkrishna Komnak & Ors ... Respondents

Mr. Ram S. Apte, Sr. Advocate i/by Mr. Ketan Dhavle,
for Petitioner.

Mr. Mohan P. Dalvi, for Respondent No.1.

Mr. Sunil Karandikar, for Respondent Nos.4 to 11 & 13.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 18, 2023

P.C.:

1. The petitioner claims to be landlord of the suit property. The predecessor of respondent Nos.1 to 3 file Regular Civil Suit No.17 of 1995 for removal of encroachment to the extent of 3 gunthas by way of house property and injunction restraining plaintiff's possession over the suit property.
2. Respondent Nos.4 to 13 contested the suit by filing written statement. Based on pleadings of the parties, the Trial Court framed the issues.
3. Out of the issues, the two issues framed by the Trial Court

are as under:

“1. Does plaintiff prove that he is tenant of suit filed ?

5. Do defendants prove that they are tenant of the suit field and plaintiff has no concern with it ?”

4. It is not in dispute that issue No.1 was referred to the Authorities under the Bombay Tenancy and Agricultural Lands Act, 1948 and reference was answered in favour of the defendants. The judgment holding plaintiffs failed to prove that he is tenant in the suit property attained finality. The Trial Court dismissed the Regular Civil Suit No.17 of 1995.

5. Respondent Nos.1 to 3, therefore, filed Regular Civil Appeal No.44 of 2014. In the said appeal, the landlord filed an application to add him as respondent as he is owner of the suit property.

6. The Appellate Court rejected the application; hence, the present writ petition.

7. Once, the Tenancy Authorities under Bombay Tenancy and Agricultural Lands Act, 1948 concluded that the plaintiff in the present suit failed to prove that he is tenant in the suit field, it is not necessary to allow the owner of the suit property who claims plaintiff as his tenant to be made party in appeal.

8. It is well settled that, the finding of Tenancy Authorities in relation to right of person as tenant is binding on Civil Court and power of Civil Court to record finding inconsistent that the

findings of Tenancy Authorities is specifically barred.

9. It is well settled that a person can be necessary party without whose presence effective decree cannot be passed. In the facts of the case, based on findings of Tenancy Authorities and material on record, the Trial Court dismissed the suit against which the plaintiff has filed present appeal. Therefore, petitioner's application claiming plaintiff to be tenant and he is the owner has rightly rejected by the Appellate Court. Hence, there is no legal infirmity in the order.

10. The writ petition is dismissed. No costs.

11. It is made clear that the findings recorded in civil suit shall not bind the owner who is not party to the suit.

(AMIT BORKAR, J.)