

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1706 OF 2023

Suman Shankarrao Patil__ Vs. __ Chitra Sheshrao Patil and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C.A.Joshi, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/03/2023

1] Heard Mr. Joshi, learned counsel for the petitioner.

2] The petition challenges the order dated 13.10.2022 (pg.66) passed by the learned Trial Court, after remand by this Court (Order dated 11.10.2018 in W.P. No. 3251/2016, pg.67), whereby the learned Trial Court has framed the issue of tenancy.

3] It is contended that the issue could not have been framed by the learned Trial Court, as the pleadings in that regard were vague and no document was placed to substantiate the tenancy. Reliance is placed upon **Pandu Dhondi Yerudkar, vrs. Ananda Krishna Patil, 1974 Mh.L.J. 548; Pulmati Shyamlal Mishra and anr vrs. Ramkrishna**

Gangaprasad Bajpai and ors, 1981 Mh.L.J. 321; National Insurance Co. Ltd. Vrs. Romesh Kumar Gandotra, AIR 1989 J & K 65; Sociedade Patriotica Dos Baldios Das Novs Conquistas vrs. Sudhakar Sagun Ghandari and anr, 2008 (5) Mh.L.J 391 and Mohammad Hayatkhan Karimkhan and anr vrs. Taramati Sadhu Khindkar and ors, 2011 (2) Mh.L.J.653. It is therefore submitted that the pleadings in this regard are vague and there is no material document placed on record to substantiate the plea, the impugned order needs interference.

4] The averments in the written statement regarding the tenancy in favour of the defendant no.1 is in para 12 (pg.34). The pleadings as spelt out from para 12 indicate that since May of 1983 the defendant is in possession of the land of Gat no. 155 and 109 of Mouza Sukli, which were taken by him on 'Batai' from the defendant Sau. Suman and since that date the defendant has been giving half crop to the said Suman/plaintiff no.2. It is categorically stated that the status of the defendant is that of the tenant in view of the tenancy created by the plaintiff no.2/petitioner in favour of the original defendant. Not only this, even the claim in para 9 contemplates this position of tenancy and

states that it is a false plea. This would clearly indicate that the plea of the original defendant being a tenant of the aforesaid agriculture land, is not vague but is clearly spelt out from the averment in para 12 of the written statement, which is equally to the knowledge of the plaintiff/petitioner, in view of the averments in the plaint (para 9). Para 12 of the written statement of the defendant also speaks about the revenue entries.

5] That being the position, in my considered opinion, the plea is neither vague nor a plea which could be said to be malafide with an intention to delay the proceedings. The propositions laid down in the aforesaid judgment, do not assist the learned counsel for the petitioner on any count, considering which I do not see any reason to interfere with the impugned order. The petition is dismissed. No costs.

JUDGE

Rvjalit