

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16645 OF 2023

Naresh Taturam Patil and Anr.

.. Petitioners

Versus

Gouru Lahu Patil and Ors.

.. Respondents

.....

- Dr. Pawan K. Pandey a/w. Ms. Anita Dwivedi Ms. Suman Gupta and Mr. Ashok Gupta, Advocates for Petitioners.
- Mr. C. J. Chavan, Advocate for Respondent Nos.1 and 2.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 31, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Pandey, learned Advocate for Petitioners and Mr. Chavan, learned Advocate for Respondent Nos.1 and 2.
- 3.** Perused the praecipe dated 31.01.2024 and the Writ Petition.
- 4.** I had heard Dr. Pandey on 10.01.2024 and the following order was passed:-

“1. Heard Dr. Pandey, learned Advocate for Petitioners.

2. The impugned order is dated 21.06.2023 passed below Exhibit “22” and Exhibit “43” filed by the Petitioners who are Defendants in the Civil Suit before the Trial Court. Civil Suit No.359 of 2010 is filed by the Respondents being Plaintiffs before the Trial Court in the year 2010 and it is seen that thereafter no steps have been taken by them to prosecute their suit claim.

3. Being aggrieved, Defendants who are Petitioners before me filed two Applications below Exhibit “22” and Exhibit “43”. Application below Exhibit “22” sought rejection of the Suit

plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “CPC”) in view of the fact that the substantive rights in respect of the suit land were already determined in favour of the Petitioners by virtue of the order dated 02.01.2009 passed by the Tahsildar in proceedings initiated under Section 84 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “the said Act”) inter alia, determining the Petitioners as Kabjedar of the suit lands.

4. Mr. Pandey would submit that the aforesaid order stands fully complied with by virtue of mutation in the revenue records for the suit lands having already taken place in favour of Petitioners. He would next submit that this particular order came to be challenged by way of statutory Appeal before the SDO and the statutory Appeal also stood dismissed by order dated 06.09.2010 and reference to that is found in paragraph No.8 of the reasons given by the learned Trial Court in the impugned order.

5. Thereafter Mr. Pandey would submit that the aforesaid order of the SDO was also challenged in second Appeal before the Collector, Raigad by the Respondents and the Collector also dismissed the second Appeal. No proceedings were taken by the Respondents thereafter and in that view of the matter, he would submit that the order dated 02.01.2009 has become final.

6. In the above background, Respondents then filed Civil Suit before the Trial Court for seeking declaration in respect of the same lands, and also challenged the revenue entries in the Revenue Record standing in the name of Petitioner No.1. It is seen that for more than 10 years after filing the Suit in the Trial Court, no steps were taken by Plaintiffs to prosecute the Suit. Therefore, the Petitioners (Defendants) were compelled to file the aforesaid two Applications below Exhibit “22” and Exhibit “43” and by both these Applications Petitioners sought dismissal of the Suit under Order VII Rule 11 of the CPC.

7. Prima facie, in the backdrop of the aforesaid tenancy proceedings which are referred to and alluded to herein above, the Suit filed by the Respondents before the Trial Court is not maintainable at all as there is an express bar under the provisions of Section 85 of the said Act for maintainability of such a Suit. Despite that the learned Trial Court has rejected both the Applications filed under Order VII Rule 11d of the CPC by merely stating that the Suit which has now been filed by the Plaintiffs is for setting aside of the order dated 02.01.2009 passed by the Tahsildar in the Agricultural Lands / Tenancy proceedings as being unauthorized and nullity. Such a finding is impermissible in law in the wake of the Respondents having challenged the order dated 02.01.2009 unsuccessfully before the SDO as also before the Collector.

8. An arguable case has therefore been made out by Mr. Pande for issuance of notice and ad-interim relief.

9. Record of the case clearly indicates that after filing of the Suit in the year 2010, Plaintiffs have not taken any steps

thereafter.

10. However one opportunity needs to be given to the Plaintiffs. Hence, issue notice to the Respondents (Plaintiffs). Humdast permitted.

11. In addition to Court notice, Petitioners are permitted to serve a copy of the Petition and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

12. Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocates.

13. Respondents are directed to file their Affidavit-in-Reply on or before the next date.

14. It is clarified that, if the Respondents do not remain present on the next adjourned date, this Court shall hear the Petition on its own merits and in accordance with law and pass appropriate orders in the Writ Petition.

15. Stand over to 24th January, 2024.”

5. Today at the time of mentioning Respondent Nos.1 and 2 are represented by Mr. Chavan and he is present before me.

6. In his usual fairness Dr. Pandey would inform the Court that considering observations and findings in the above order, this Court may pass appropriate orders in the present Writ Petition after hearing Mr. Chavan and keeping in mind that the Plaintiffs have filed the suit proceeding before the learned Trial Court in the year 2010 and thereafter have not taken any further steps to prosecute the same.

7. Adhering to the submissions of Dr. Pandey and after hearing Mr. Chavan, I am clearly of the opinion that the impugned order deserves to be set aside and the suit proceedings deserve to be determined in view of the Plaintiffs having exercised their statutory remedy available to them in appropriate Tenancy proceedings

under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “**the said Act**”) and having lost all throughout upto the stage of second appeal before the Collector. Hence maintainability of the Suit on the ground of fresh cause of action in a Civil Suit proceedings is impermissible and cannot be allowed for the same cause of action.

8. In view of the above, the impugned order dated 21.06.2023 is quashed and set aside. Resultantly, the Application filed below Exhibit-22 read with Application under Exhibit-43 stands allowed resulting in the Special Civil Suit No.359 of 2010 being dismissed. Petition succeeds.

9. Mr. Chavan is permitted by the Court to file his Vakalatnama in the Registry. Registry shall accept the same.

10. With the above directions, Writ Petition is allowed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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