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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1376 OF 2024

Devidas Kuber Kadam .. Petitioner
Versus
Popat Krishna Shinde and Ors. .. Respondents

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• Mr. Rupesh Bobade, Advocate for Petitioner.

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CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 07, 2024.

P.C.:

1. Heard Mr. Bobade, learned Advocate for Petitioner.
2. The impugned order in the present Writ Petition is order passed below Exhibit “72” in an Application filed by Plaintiffs seeking amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “**CPC**”). This Application has been allowed.
3. Grievance of Petitioner is that Petitioner is a third party purchaser of the Suit property of Defendants. The Petitioner has purchased the Suit property from Defendants after obtaining permission from the Collector. The owner of the Suit property had obtained 32-G order and 32-M certificate under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “**the said Act**”) in his favour and was declared as owner of the Suit property under the said Act. Thereafter it was sold to Petitioner.

4. In view of the above facts, the principal Suit which was filed for declaration that the Defendants were not tenants of the Suit property was itself not maintainable in view of the fact that the Defendants were having 32-G order and 32-M certificate in their favour.

5. Mr. Bobade has drawn my immediate attention to Exhibit “C” - page No.42 of the Writ Petition wherein the learned Judge on 20.12.2022 has infact passed an order directing Plaintiffs to satisfy the Trial Court on the issue of maintainability of the Suit in view of the aforesaid facts.

6. It is rightly observed by the learned Trial Court while passing that order, that the Suit is filed without availing the statutory remedies available to the Plaintiffs under the said Act by maintaining a challenge to the 32-M certificate in the appropriate forum.

7. Mr. Bobade would submit that Plaintiffs had approached the Maharashtra Revenue Tribunal to challenge the 32-G order and 32-M certificate and lost all throughout. The said order is dated 15.03.2022 at page No.37 of the Writ Petition.

8. It is next argued by Mr. Bobade that immediately because of passing of the order dated 20.12.2022 Plaintiffs have filed Application below Exhibit “72” seeking amendment and a declaration for cancellation of sale deed and partition. Such an Application filed

under Exhibit “72” itself is not maintainable in the first place. However, the Application below Exhibit “72” has been allowed alongwith the direction to Plaintiffs to amend the Suit plaint.

9. The impugned order dated 09.01.2023 is clearly unsustainable in law. Order of the Revenue Tribunal upholding the 32-M certificate has become final. It is seen that the original Suit proceedings itself are an abuse of the due process of law and itself are not maintainable in view of the reliefs prayed for in the Suit plaint.

10. An arguable case has therefore been made out by Mr. Bobade for issuance of notice and stay of the Suit proceedings.

11. Issue notice to the Respondents. Humdast permitted.

12. In addition to Court notice, Petitioner is 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.

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

14. Respondents are directed to take cognizance of this order and file their Affidavit-in-Reply on or before the next date, if so desired.

- 15.** Stand over to **29th February, 2024 at 02:30 p.m.**
- 16.** In the meanwhile, the proceedings before the learned Trial Court stand stayed.
- 17.** It is clarified that, present Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself.

[MILIND N. JADHAV, J.]

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