

Ajay

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

WRIT PETITION NO. 1376 OF 2024

Devidas Kuber Kadam

Petitioner

.. (Orig. Defendant No.3)

Versus

Popat Krishna Shinde and Ors.

.. Respondents

.....

- Mr. Rupesh Bobade, Advocate for Petitioner.
- Mr. Vinayak Shinde, Advocate for Respondent No.4.
- Ms. Seema S. Dighe, Advocate for Respondent No.6.

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 18, 2024.

P.C.:

1. Heard Mr. Bobade, learned Advocate for Petitioner; Mr. Shinde, learned Advocate for Respondent No.4 and Ms. Dighe, learned Advocate for Respondent No.6.

2. It seen that Regular Civil Suit No.855 of 2018 is filed seeking a declaratory relief in respect of challenge to the 32-M Certificate issued under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “**MTAL Act**”) in favour of Defendant Nos.1, 2 and one of that deceased brother namely Namdeo. Consequential relief of possession is also sought for by the Plaintiffs. Writ Petition is filed to challenge order allowing Application under Order VI Rule 17 of the Code of Civil Procedure, 1908 filed by Plaintiffs for amendment to the Suit plaint.

3. However, before this Court can apply its mind to the said amendment Application. Mr. Bodake, learned Advocate has drawn my attention to order dated 20.12.2022 passed by the learned Trial Court which is appended as Exhibit “C” - page No.42 of the Writ Petition. He would submit that in view of the express bar contained under the provisions of Section 63 of the MTAL Act, the learned Trial Court has passed the said order directing the Plaintiffs to argue and satisfy the learned Trial Court on the issue of maintainability of the Suit proceedings in the Trial Court.

4. Mr. Shinde, learned Advocate appearing on behalf of the Plaintiffs has seen the order dated 20.12.2022 and admits to the passing of the said order. I have impressed upon Mr. Shinde that any Application filed or any order passed *suo moto* by any Trial Court seized with the hearing of the Suit proceedings pertaining to the issue jurisdiction of the Court goes to the root of the proceedings and is always required to be decided at the outset.

5. In the present case, it is seen that the order dated 20.12.2022 passed below Exhibit “01” is passed *suo moto* by the Court after perusing the Suit plaint on the said Suit having been transferred to the Trial Court for expeditious disposal. In that view of the matter, the reasons accorded by the learned Trial Court in the order dated 20.12.2022, *prima facie*, on the face of record appear to be correct and

hence maintainability needs to be decided. Therefore the Plaintiffs will have to argue and satisfy the learned Trial Court on the maintainability of the Suit filed by them before any other proceedings in the Suit are further undertaken by the Trial Court.

6. Mr. Bodake would submit that despite passing of the order dated 20.12.2022 and pendency of the submissions on behalf of the Plaintiffs on the point of maintainability of the Suit, Plaintiffs filed Application seeking amendment which has been allowed.

7. The aforesaid issue can be resolved by directing the learned Trial Court to decide the issue of maintainability in the first instance before hearing this Petition. This is because once the issue of maintainability is decided, subject to the outcome of the decision of the learned Trial Court on the issue of maintainability of the Suit, any other proceedings before the Trial Court will either stand or will be accordingly consigned.

8. In view of the above facts, I am of the opinion that the learned Trial Court should decide the issue of maintainability of the Suit proceedings in the first instance itself. Hence, parties are directed to appear before the learned Trial Court and the learned Trial Court shall hear the Plaintiffs as also the Defendants on the issue of maintainability of the Suit proceedings and pass a reasoned order, subject to which any further orders shall be considered and passed in

the present Writ Petition.

9. Though this Court can dispose of the present Writ Petition also, in order to ensure that parties are not put to filing further proceedings, it would be appropriate to keep the present Writ Petition pending in the meanwhile. The decision on maintainability of the Suit shall be placed before this Court by the parties.

10. In view of the above, the learned Trial Court shall decide the issue of maintainability of Regular Civil Suit No.855 of 2018 after hearing both the parties strictly in accordance with law. Subject to the order that would be passed by the learned Trial Court, the present Writ Petition shall be taken for hearing on the next adjourned date.

11. It is directed that the learned Trial Court shall decide the issue of maintainability after hearing both the parties within a time bound programme and as expeditiously as possible and in any event within a period of 8 weeks from today.

12. In the meanwhile, ad-interim relief granted earlier, if any, shall continue.

13. Stand over to **24th June, 2024.**

[MILIND N. JADHAV, J.]