



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

CIVIL APPLICATION (CAS) NOS. 1001 OF 2023 & 1456 OF 2023
IN
SECOND APPEAL NO. 16 OF 2016

Smt. Kamlabai Wd/o. Sitaramji Chunarkar (Dead), Vitthalrao S/o Sitaramji
Churankar and another
..VS..

Sau. Anjanabai W/o Bajarangji Sawarkar (Dead) through LR. and others

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

Court's or Judge's orders

Mr. R.D. Bhuibhar, Advocate for appellants.
Mr. A.S. Dhore, Advocate for respondent Nos.1(ii), 1(iv) & 2 to 7.

CORAM : SANJAY A. DESHMUKH, J.

DATED : 27th JUNE, 2024

1. These two application are filed by the appellant for permission to raise additional substantial questions of law by amending the appeal memo.
2. Learned Advocate for the appellants pointed out para No.3 of the Civil Application No.1001 of 2023 and para No.6 of the Civil Application No.1456 of 2023.
3. Heard learned Advocates for both sides.
4. Perused the applications and the separate replies filed by the respondents to both the applications.
5. Learned Advocate for the appellant submitted that specific plea is raised in the application that the reference must be sent to the Tahsildar under Section 124 of the

Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, however, that issue was not framed by the Trial Court as well as the First Appellate Court. He, therefore, submitted that framing of that issue is necessary. Learned Advocate for the appellant further submitted that it is necessary to frame the substantial questions of law regarding granting of relief and carving out of his share. He further pointed out that the plaintiff did not include all the joint family property in the said suit. The suit was not brought about the common hotpotch of the entire properties. Hence, he prayed for allowed both the applications.

6. Learned Advocate for the respondents strongly objected these applications. He submitted that it was not the case of the defendants that as to whether anybody is tenant or not therefore, no question of reference arises. He relied upon the authority of ***Pulmati Shyamlal Mishra & Anr. Vs. Ramkrishna Gangaprasad Bajpai & Ors.***, reported in ***1981 Mh.L.J. 321***, in which it is held that the Court has to examine the substance of the claim and refuse to frame any such issue if the same appears to be demonstrably frivolous and *mala fide*.

He further relied on ***D.M. Deshpande & Ors. Vs. Janardhan Kashinath Kadam (Dead) by LRs. & Ors.***, reported in ***(1998) 8 SCC 315***. Para No.9 reads as under :

“Learned counsel for the appellants has relied upon three decisions in support of his contention that a vague plea does not justify

an issue being framed. In this connection a reference was made to Ram Sarup Gupta Vs. Bishun Narain Inter College & Others (1987 (2) SCC 555, where the. Court has held that all necessary and material facts should be pleaded by the party in support of the case set up by it. In the absence of pleading, evidence if any produced by the parties cannot be considered. The object and purpose of a pleading is to enable the adversary party to know the case of the opponent. In order to have a fair trial it is imperative that the parties should state the essential material facts so that the other party may not be taken by surprise. The Court has, however, cautioned against a pedantic approach to the problem and has directed that the Court must ascertain the substance of the pleading and not the form, in order to determine the case. The respondent have emphasised latter observations. In the present case, however, no material in support of the plea of tenancy has been set up anywhere in any form. In the case of M/s Nilesh Construction Company & Anr. Vs. M/s Gangubai & Others (AIR 1982 BOMBAY 491), the Court observed that before a reference to the Mamlatdar for deciding the issue of tenancy under the Bombay Tenancy and Agricultural Lands Act, 1948 is made the alleged tenant must disclose in his pleadings, details about the tenancy and the exact nature of the right which is claimed by him. An issue of tenancy cannot be raised on a vague plea.”

Learned Advocate for the respondents further relied on ***Uttam Sambha Deshmukh & Ors. Vs. Yamunabai W/o Chandrabhan Bhojar & Ors.***, reported in ***1998(2) Mh.L.J. 144***, in which it is held that issue regarding tenancy neither arising nor necessary for

adjudicating controversy, making of reference to competent authority not warranted.

7. In this regard, the pleading of the defendants is decisive. He had pleaded that it was tenanted land, however, decision as to tenancy was taken by the authority in the year 1970. There is no issue as to the existence of legal relationship between the tenant and landlord, therefore, the reference is not warranted in the peculiar set of facts particularly the defence raised by the defendants. As far as other substantial questions of law are concerned, those are raised in para No.3 of the Civil Application No.1001 of 2023, there is substance in the argument of learned Advocate for the appellant. However, for deciding the controversy, these substantial questions of law needs to be formed. Hence, the following substantial questions of law is framed :

- (iv) Whether the learned Courts below could have granted the relief to the respondents/original plaintiffs which was not their pleaded case and no prayer or the relief so granted was sought for?
- (v) Whether the partition suit filed by the respondents/original plaintiffs was maintainable on account of non-inclusion of the alleged joint family properties in possession of the respondent Nos. 6 and 7?

8. Hence, the Civil Application No. 1001 of 2023 is, therefore, **allowed** and Civil Application No.1456 of 2023 deserves to be rejected, it is **rejected**.

9. In view of above, the substantial questions of law raised in the Civil Application No. 1001 of 2023 are permitted to be incorporated in the memo of appeal. The appellant is directed to carry out the amendment within a period of one week and supply amended copy to the other side.

10. Stand over to **19.07.2024** for final hearing.

(SANJAY A. DESHMUKH, J.)

Kirtak