



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

WRIT PETITION NO.8587 OF 2022

Vijay S/o Maniklal Mundhada and others .Vs. Abid Sheikh S/o Ibrahim Sheikh and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Deshpande, Advocate for petitioners.

Shri V.S. Dhobe, Advocate for respondent No.1.

Shri N.G. Solao, Advocate for respondent Nos.3, 4A to F.

Shri D.B. Walthare, Advocate for respondent Nos.5 to 7.

CORAM : ANIL S. KILOR, J.

DATED : 05/02/2024

1. Heard.

2. The order below Exh.44 dated 10.01.2022 passed by the District Judge-1, Bhandara in Regular Civil Appeal No.03 of 2021, rejecting the application preferred by the petitioner i.e. the original defendant No.7 to frame additional issue namely “whether the plaintiff is an agriculturist?”, is under challenge in this writ petition.

3. The petitioners are the original defendants in a suit filed by the respondent No.1 for specific performance.

4. In the written statement filed by the defendant No.3, he raised the objection to the tenability of the suit on the ground that, plaintiff is not an agriculturist and therefore, as per section 89 of the Maharashtra Tenancy and

Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as “the Tenancy Act”), decree cannot be passed.

5. The petitioner adopted the written statement of defendant No.9 who did not raise any objection.

6. The learned trial Court however, framed an additional issue No.1 “whether the defendants prove that the suit claim is not tenable at law ?

7. Thereafter, on recording evidence and hearing the parties, the learned trial Court decreed the suit and categorically held that, the plaintiff is an agriculturist.

8. The petitioners thereafter preferred an appeal namely Regular Civil Appeal No.03 of 2021 in the Court of District Judge-1, Bhandara. During the pendency of the said appeal, the petitioners moved an application Exh.44 praying thereby to frame additional issue “Whether the plaintiff is an agriculturist ?” and further to refer the matter to the Tahsildar to decide the same.

9. The said application came to be rejected vide order dated 10.01.2022.

10. I have heard the learned counsel for the respective parties.

11. Shri Deshpande, learned counsel for the petitioner has argued that, it is the bounden duty of the Court to refer the matter to the tenancy Court where the issue is involved “whether the plaintiff is an agriculturist”.

12. He submits that, the learned trial Court without referring the matter to the tenancy Court, decided the said issue and thereby committed error. He further submits that, in view of the well settled position of law, the learned appellate Court ought to have allowed the application and after framing of issue, ought to have referred the matter to the tenancy Court.

13. On the other hand, Shri Dhobe, learned counsel for the respondent No.1 submits that, the learned trial Court has already decided the issue and thereby, held that the plaintiff is an agriculturist. It is therefore, submitted that, the petitioners cannot file the application at the appellate stage to refer the matter to the Tahsildar.

14. It is submitted that in view of the fact that, the suit is for specific performance and it is not binding on the

Court to refer the matter to the Tenancy Act whenever such question is involved, the application was rightly rejected.

15. It is submitted that there is no impediment in decreeing the suit for specific performance even if plaintiff is not an agriculturist. However, it may be an impediment, at the time of execution.

16. He further points out that, even if it is held that, the plaintiff is not an agriculturist under the provisions of Tenancy Act, before execution of sale deed, the permission from the Collector can be obtained.

17. The learned appellate Court while rejecting the application moved by the petitioners has recorded the reasons in detail. After going through those reasons, it is evident that, the learned trial Court has considered the authorities and the law and has rightly arrived at a conclusion that, if the law does not prohibit entering into contract then there is no reason not to enforce such contract. The Court has further rightly held that, granting of decree does not always carry the risk of frustration if the competent authority does not grant permission.

18. Admittedly, the trial Court had framed an additional issue, whether the defendants prove that the suit

claim is not tenable at law ? While answering the same, it was held that the plaintiff is an agriculturist. Thus, any error committed by the trial Court in recording the findings or if according to the petitioners the said findings are perverse as they are without any evidence, the petitioners may argue the same and substantiate it on the basis of the evidence and the law.

19. However, in any case, once the additional issue was framed by the trial Court, whether the defendants prove that the suit claim is not tenable at law ? again praying for framing of similar issue by the First Appellate Court and referring the matter to the Tenancy Court to decide, whether the plaintiff is an agriculturist or not, cannot be permitted.

20. The First Appellate Court, at the time of final decision after scrutinizing the evidence and considering the law, if comes to the conclusion that, the finding recorded by the trial Court that, the plaintiff is an agriculturist, is perverse and further arrives at a conclusion that no decree of specific performance can be passed unless the plaintiff is an agriculturist, in that event, the First Appellate Court may adopt the mode as suggested by the petitioners.

21. In the circumstances, I do not find any merit in the present writ petition. Accordingly, the writ petition is **dismissed**.

JUDGE