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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

44 WRIT PETITION NO. 4969 OF 2025

YASHWANT GYANBA MORE AND OTHERS

....Petitioners

VERSUS

MANISHA YASHWANT MORE AND OTHERS

.....Respondents

Mr. Sushant V. Dixit, Advocate for the petitioners

Mr. Amit Ashok Yadkikar, Advocate for the respondent No.1

CORAM : KISHORE C. SANT, J.

DATE : 22nd APRIL, 2025

P. C.

1. Heard the learned advocate for the petitioners and learned advocate for respondent No.1.

2. The petitioners are original defendants in the suit instituted by respondent No. 1. Present respondent Nos. 2 and 3 are also the original defendant Nos. 2 and 3 in the suit for partition bearing SCS No. 100/2014. In the said suit the petitioners appeared by filing written statement dated 25-02-2015. Thereafter, the petitioners filed an application for framing

of issues.

3. It is the case of the petitioners that petitioners have acquired right in the property in their possession being tenant in the property. It is also a specific case of the petitioners that there is a certificate issued under Section 38 (5) of the Hyderabad Tenancy and Agriculture Lands Act. Issue is therefore necessary to be framed. The learned trial Judge allowed the application and framed the issue as to whether the defendant proved that Gut No. 157 is self acquired property of defendant No.1. The petitioners thereafter again filed an application for re-cast of issues. Specifically as to whether defendant No.1 has acquired the right over the property under the provisions of Hyderabad Tenancy and Agriculture Lands Act and it is self acquired property. Said application came to be rejected by order dated 26-02-2018.

4. The petitioners, therefore, approached before this court by filing writ petition No. 5880/2018. This court by order

dated 17-01-2023 dismissed the writ petition. It is specifically observed that necessary pleading will be taken into consideration. It is, thereafter, these petitioners filed an application for referring the issue of tenancy to the Tahasildar for decision on the said issue. Said application came to be rejected. The petitioners are thus before this court.

5. Mr. Dixit, learned advocate vehemently argued that there is specific pleading on record wherein an averment is made by the defendant that he acquired land as a tenant. There is pleading showing that there is certificate issued under the Tenancy Act, under Section 38(5). Since there is averment in the plaint that the property is joint family property, issue is required to be referred to the tenancy authority. The learned trial judge has failed to appreciate this basic fact and has passed an erroneous order.

6. The learned Advocate Mr. Yadkikar, vehemently opposed the petition. He submits that by giving dates as stated

in the opening para that this is only an attempt to prolong the proceeding of the suit. The court has rightly framed the issue as to whether the petitioners proves that the property is self acquired property. While deciding that issue, it is open for the petitioners to give evidence in support of his case.

7. This court finds that written statement was filed 25-02-2015 wherein there is already an averment made as regards acquiring of tenancy rights. When there is specific averment that there is tenancy certificate issued in favour of petitioner-predecessor, this court does not find that now issue needs to be referred to the tenancy authority. It is open for the petitioners give further evidence if they want to produce any in the suit. This court does not find any error committed by the learned trial court while passing the impugned order.

8. Considering above, this court is not inclined to entertain the writ petition. Therefore, the writ petition stands dismissed. No order as to costs.

9. Considering that the suit is of 2014, the learned trial court is requested to decide the suit as early as possible and preferably within one year from today.

[KISHORE C. SANT, J.]

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