



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 FIRST APPEAL NO. 213 OF 2024

GOPAL SINGH MOHANSING RAJPUT AND ANOTHER
VERSUS
JAISHREE BALISINGH CHAUDHARY DIED THR LRS ARJUNSINGH
AND OTHERS

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Advocate for Appellants : Mr. Shaikh Mujtaba Gulam Mustafa
Advocate for Respondent Nos.1 to 4 : Mr. D. A. Madake
h/f. Mr. Bhosle Pratik Arvind
Advocate for Respondent Nos.5 to 9 : Mr. Pratik P. Kothari
h/f. Mr. Jaju Nikhil Santosh

...

CORAM : KISHORE C. SANT,
SUSHIL M. GHODESWAR, J.J.

DATE : 05.02.2026

PER COURT :

1. Heard the parties.
2. Since the appeal arises out of the order passed by the learned Civil Judge Senior Division allowing the application under Order 7 Rule 11 of the Code of Civil Procedure and rejecting the suit.
3. This Court finds that present appeal can be disposed of at the stage of admission itself, the record is not necessary for the purpose of deciding the appeal.

4. The pleading in short in the suit is that, the mother of the plaintiffs / present appellants happened to be the sister of husband of original defendant No.1 Jaishree who is now dead and succeeded by defendant Nos. 1 (A) to 1(F). Defendant No.5 is the Developer firm and defendant Nos.6 to 9 are its partners.

5. The plaintiffs filed a suit seeking partition and separate possession of the suit land and a declaration that the sale deed bearing No.5361/2022 dated 06.10.2022 executed by defendant Nos. 1 to 4 in favour of defendant Nos. 5 to 9, is void ab-initio and not binding upon plaintiffs etc. It is their case that being a sister of late Balising Chaudhari, she has share to the property. The pleadings are simply on that basis. In the suit, all the defendants have appeared.

6. Defendant Nos. 1 to 4 filed an application under Order VII Rule 11 of the Code of Civil Procedure, (for short C.P. C.). It is the case of the defendants that the land happens to be a tenanted land. Tenancy is declared in favour of late Balising long back. Since the land is tenanted land, the issue of the tenancy also will have to be decided. Since the issue of tenancy is invoked, there is a bar of Section 99 of the

Hyderabad Tenancy and Agricultural Lands Act, 1950.

7. This application was resisted by the plaintiffs. However, the learned Civil Judge Senior Division, by way of impugned order dated 03.07.2023, allowed the application Exhibit 17 and rejected the plaint under Order VII Rule 11 of the C.P. C. The original plaintiffs/appellants are, thus, before this Court.

8. Heard the parties.

9. The learned Advocate Mr. Mujtaba submits that in the present case, the right is claimed by the plaintiffs purely being the members of the family as the mother of the plaintiffs happens to be sister of original tenant namely Balising, husband of defendant No.1-Jaishreebai. No issue of tenancy is required to be decided as such. The learned trial Court, however, wrongly observed that the issue of tenancy is required to be decided. He further submits that the learned trial Court has wrongly observed that the land was not ancestral land or self-acquired land of plaintiffs and *prima-facie* the question of tenancy is involved. He submits that this observation is totally contrary to record. His further submission is that while deciding the application under Order VII Rule 11 of the C.P. C., what it is to be seen is the pleading in the

plaint and no part of the written statement of the defence is required to be seen at the stage of deciding the application under Order VII Rule 11. He submits that in the present case, it is the case put forth by the defendant Nos. 1 to 4 in the application for the first time that the issue needs to be referred to the tenancy authorities. He submits that ***Section 99-A of the Hyderabad Tenancy & Agricultural Lands Act, 1950*** (HTAL Act) does not prescribe that the partition suit in respect of tenanted property needs to be referred to the tenancy authorities, when already the tenancy rights have been decided in favour of Jaiyashree where the plaintiff was not a party.

10. The learned Advocate for the plaintiffs relies upon the judgment reported in ***2012 (6) Mh.L.J. page No.758***, in the case of ***Bhau Ram Vs. Janak Singh and others***. He further relies upon the judgment reported in ***(2025) 4 SCC, page No. 38*** in the case of ***Central Bank of India and another vs. Prabha Jain and others***.

11. The learned Advocate Mr. Madke for original defendant Nos. 1 to 4 vehemently argued that in the present case admittedly the land is a tenanted land. There is no dispute about the nature of the right over the property. Even if the suit appears to be a partition suit, the issue of

tenancy will have to be considered by the Court as in view of Section 99 of the HTAL Act, there is clear bar of jurisdiction and no Civil Court can entertain the question as regards the tenancy and the tenanted property. He thus supports the order passed by the trial Court.

12. Learned Advocate for respondent Nos. 5 to 9 adopts the arguments of defendant Nos. 1 to 4. He submits that the mother of the plaintiffs married long back in the year 1963 and it is thereafter the tenancy rights were decided by the authorities in favour of Jaishreebai. He, thus, supports the order.

13. This Court has heard the parties. ***Section 99-A of the Hyderabad Tenancy & Agricultural Lands Act, 1950, reads as under :***

“ 99-A.- If any suit instituted in any Civil Court, involves any issues which are required to be settled, decided or dealt with by an authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the competent authority) the Civil Court shall stay the suit and refer such suit to the competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act, and shall communicate its decision of the suit in accordance with the procedure applicable thereto.”

This Court has thus, to consider from the plaint as to whether any of the question which is arising in the plaint requires consideration by the tenancy authorities under the Act. In the pleadings, it is plain and simple case of the plaintiffs that the properties are ancestral property of mother of plaintiffs namely Mathurabai and was the owner of the property. Now Jaishreebai has got herself declared as a tenant in proceeding. However, that itself will not bring the issue of tenancy to be decided in the suit.

14. Order ***VII Rule 11 of the Code of Civil Procedure*** reads as under :-

“The plaint shall be rejected in the following cases :-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of [rule 9](#)”.

15. It is very clear that what is to be considered it would be the statements in the plaint and not any other material. This Court finds that the learned Advocate for the appellants has rightly placed reliance on the judgment in the case of **Bhau Ram** (*supra*), relevant portion of para 8 reads as under :

8. The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11, Civil Procedure Code, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant’.

16. In the case of **Central Bank of India** (*supra*), in paragraph 23 also the Honourable Apex Court has held that what is material to be seen at the stage is the pleading in the plaint and the plaint cannot be rejected. This Court on considering pleadings clearly finds that in the present case, the plaint does not disclose any other cause of action or does not raise any issue which is required to be decided by the tenancy authorities. This Court, therefore, finds that the learned trial Court has committed an error by rejecting the plaint by allowing the application Exhibit 17. For this reason this Court is inclined to allow the application. Hence following order :

ORDER

1. Order dated 03.07.2023 passed by the learned 3rd Jt. Civil Judge Senior Division, Jalna in Special Civil Suit No. 46/2023 is quashed and set aside.
2. The suit shall be restored in its original position.
3. Looking to the facts that the suit is pending since 2022, almost 3 years time is already passed, this Court expects the trial Court to decide the suit as early as possible.
4. The Appeal is accordingly disposed of.

(SUSHIL M. GHODESWAR)
JUDGE

(KISHORE C. SANT)
JUDGE

shp/-