

MHKO180001902022



R.C.S.No.51/2022

Krishna Koli Vs Aannappa Koli

CNR NO.MHKO180001902022

**ORDER BELOW EXH.33**  
**(Dated 10th August , 2023 )**

1] This application is filed by the defendants under O.7 R.11 of C.P.C. for rejection of the plaint. As per their contention plaintiffs have filed present suit on the basis of their tenancy rights in the suit properties. They have filed their written statement and denied all contentions of the plaintiffs. The entry in the name of Nillappa Aannappa Koli was nominally taken in the revenue record. Since prior to 01.04.1957 father of the defendant no.2 namely Dhullappa Aannappa Koli was in possession of the suit property as a tenant. Plaintiffs and their predecessors never in the possession of the suit property as a tenant. There is dispute between the plaintiffs and defendants in respect of tenancy. Therefore, civil court not having jurisdiction to decide issue in respect of tenancy. However, the plaintiffs have filed present suit on basis of tenancy right for perpetual injunction. But as per the provision of Bombay Tenancy and Agricultural Land Act jurisdiction of this court to decide tenancy rights is expressly bared. Hence they have requested to dismiss the suit.

2] Plaintiffs have filed their say and strongly opposed this application. As per their contention false application filed by the defendants with intention to prolong this matter. They have filed suit

for perpetual injunction restraining the defendants from obstructing their possession over the suit property. They are ready to proceed the present suit. But the application under O.7 R.11 of C.P.C. is not maintainable. Hence, they have requested to reject this application.

3] Heard advocate for both sides. Perused record and proceeding. Advocate for the defendants relied upon the judgments of Hon'ble Bombay High Court in the case of *Rajaram Totaram Patel vs. Mahipat Mahadu Patel and ors, AIR 1967 Bom.408 (V 54 C 86)* decided on 27.10.1966, in which it has been observed that, "it is clear that the issue which properly arose for decision before the Mamlatdar Court in the present case was, whether the defendant was the sole tenant of the field in dispute of the plaintiffs and the defendants were joint tenants of the field on the tillers days" ? That issue in our opinion involves the decision of the question whether plaintiffs or the defendant or both were the tenants. That issue therefore clearly falls within the ambit of section 70(b). Therefore, that question can not be tried by the civil court. It will have to be referred to the Mamlatdars for decision."

4] On perusal of record it shows that, present suit is filed for perpetual injunction. In the prayer clause the plaintiffs have prayed that the defendants and their agents and anybody on behalf of them shall be perpetually restrained from obstructing into the possession of the plaintiffs over the suit property. In para no.2 of the plaint they have pleaded that in the year 1953- 1954 their predecessor namely Nillappa Aannappa Koli was in possession of the suit property as a tenant. Plaintiff no.2 is the son of Nillappa Aannappa Koli. The name

of Kallappa Anappa Koli, Dhullappa Aannappa Koli, Nillappa Anappa Koli and Shamrao Anaapa Koli are entered in the revenue record of the suit property as a tenant. In para no.3 they have pleaded that Nilappa Anappa Koli was in possession of the suit property as a tenant on behalf of his family. The defendants have filed their written statement and denied the contention of the plaintiffs.

5] As per O.7, R.11(d) of the Code of Civil Procedure. the plaint shall be rejected, where the suit appears from the statement in the plaint to be barred by any law.

6] As per contention of the defendants their is dispute between plaintiffs and defendants in respect of tenancy rights. Therefore, this court is not having jurisdiction to decide the disputed issue in regards to tenancy. No doubt that this court is not having jurisdiction to decide disputed issue in respect of tenancy. The revenue authority is the competent authority to decide disputed issue in respect of tenancy as per the provision of Bombay Tenancy and Agricultural Land Act. But it shows that present suit is filed for simplicitor perpetual injunction restraining the defendants from obstructing possession of the plaintiff over the suit property. Therefore, this court is having jurisdiction to decide the disputed issue in respect of possession of the plaintiff and the obstruction at the hands of the defendants. Moreover, if there is issue in respect of tenancy rights said issue can be referred for the decision to revenue authorities. I have gone through the case laws cited above but at this stage ration there in is not applicable to the present matter. Because issues are not at framed. Therefore, as per O.7, R.11(d) of the C.P.C. plaint can

not be rejected. After framing of issues if it appears that there is issue in respect of tenancy between the parties same can be referred to the revenue authorities for the decision according to the law. Hence, I proceed to pass following order :-

**ORDER**

- 1] The application stands rejected.
- 2] No order as to cost.

Kurundwad.  
Date : 10/08/2023.

( S. S. Ingle )  
Civil Judge J.D., Kurundwad.

