

MHKO180003472024 	<u>Regular Civil Suit No.73/2024</u> Tammanna Shankar Kumbhar <i>Versus</i> Dhondiram Rama Kumbhar & Ors.
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ORDER BELOW EXH.16.

This is an application filed by defendant No.2 under Order VII Rule 11(b) of Code of Civil Procedure (in short C.P.C.) for rejection the plaint mainly on the ground that, suit is barred by express provision of Section 85 of Bombay Tenancy and Agricultural Land Act, 1948 (in short 'Tenancy Act').

02. Plaintiff has filed Say (Exh.17) and opposed the application. He submitted that, plaintiff is not claiming his right as per Tenancy Act. He is claiming injunction against defendants in respect of suit property.

03. Ld. Advocate for defendant No.2 argued that, in his para No.4 to 6 of the plaint, plaintiff has stated that suit property is tenancy land. An appeal is pending before sub-divisional officer, Ichalkaranji, regarding the ownership and tenancy rights of suit property between plaintiff and the defendants. So this court has no jurisdiction to try and decide the suit. The jurisdiction of civil court is barred under Section 85 of the Tenancy Act. In support of his submissions he relied upon following case-law

Saiyyed Wase v. Shegji Bhengya Padvi and Others
reported in ***2022(1) AIR Bom. R 71*** wherein
Hon'ble Bombay High Court has held that, *Suit for permanent injunction restraining the petitioner from interfering in the possession of the plaintiffs over the suit property. In suit for perpetual*

injunction, if issue of tenancy is raised, it has to be framed and referred to Tenancy Court for decision. Civil court has no jurisdiction to deal with that issue. Nature of possession of plaintiff is immaterial. Reference of issue to Tenancy Court is not at all warranted. Only after receiving decision of Tenancy Court, it will be possible for Civil Court to decide whether to grant perpetual injunction or not.

04. On the other hand Ld. Adv. Shri. B. R. Kumbhar argued that the defendants had filed RCS No.71/1994 for possession against plaintiff in respect of suit property before this Court which has been dismissed. He further argued that said suit is filed for injunction so civil court has jurisdiction to try the suit.

05. Rules 1 to 18 of Order VII relates to plaint. Rule 11 provides for various grounds for rejection of plaint. Sub clause (d) of Rule 11 of Order VII provides as under:

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

06. To appreciate the submission of both the advocates for respective parties provision of Tenancy Act need to be referred. Section 85 provides for bar of jurisdiction of civil courts which runs as under :-

Bombay Tenancy and Agricultural Land Act, 1948

Section 85 – (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, [the Collector, the Gujarat Revenue Tribunal or the State Government]

[These words were substituted for the words 'the Collector or the Gujarat Revenue Tribunal' by Gujarat 36 of 1965, section 17 (w.e.f. 01-02-1966).] in appeal or revision or the [State] [This word was substituted for the word 'Provisional' by the Adaptation of Laws Order, 1950.] Government in exercise of their powers of control.

- (2) No order of the Mamlatdar, the Tribunal, the Collector or the [Gujarat Revenue Tribunal] [These words were substituted for the words 'State of Bombay' by the Gujarat Adaptation, of Laws (State and Concurrent Subjects) (Third Amendment) Order, 1960.] or the [State] [This word was substituted for the word 'Provisional' by the Adaptation of Laws Order, 1950.] Government made under this Act shall be questioned in any civil or criminal court. Explanation. - For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdars' Courts Act, 1906 (Bombay II of 1906).

07. Perusal of Section 85 of Tenancy Act shows that jurisdiction of civil court is barred in respect of tenancy issue arises or whether a person was tenant in the part, is a tenant currently, or is deemed purchaser of the landlords property which is required to be or under this Act to be determined by a Revenue Authority. In the case in hand there is no dispute amongst the parties they are the tenant or deemed purchaser. The dispute is whether the defendants are obstructing the peaceful possession of the plaintiff in the suit property. This question clearly falls within the ambit of civil court and hence it cannot be said

that jurisdiction of civil court is ousted by express provision of Tenancy Act. Moreover, citation relied by defendants is not applicable to the case in hand as the facts of the cited case is different from case in hand. Thus, considering the aforesaid discussion I find no force in the submission of learned Advocate for defendants that the suit is barred by Section 85 of Tenancy Act. Application is devoid of merit and same is liable to be rejected. Hence, I pass following order:

ORDER

Application is rejected.

Date : 03/07/2026.
Place: Kurundwad.

(V. R. Mane)
Jt. Civil Judge Junior Division,
Kurundwad.