

ORDER BELOW EXH. 49**(Dt- 05/07/2018)**

1- This is an application filed by the defendants to transfer this suit to the Tenancy Court as tenancy issue is framed in this proceeding.

2- As per the defendants, in case of tenancy issues, the civil court has no jurisdiction to entertain the suit. Hence, this court has no jurisdiction, therefore, the defendants prayed to transfer this suit to the tenancy court.

3- The plaintiff has objected the application vide his detailed say at Exh.50. As per the plaintiff, Riyasatbanoo was the original owner of suit land Sy. No. 28 (Gat No. 249) situated at village Omerga Tq. Jalkot to the extent of 5 H. 09 R. and the father of plaintiff Khandu was a tenant of the said land.

4- The Plaintiff further contended that, the suit land was purchased by father of defendants No. 1 to 9 Bapusha from Riyasatbanoo through her son wares ali who was a power of attorney holder and since then the defendants are in possession over the suit property. The legal heirs of Riyasatbanoo filed civil suit R.C.S. No. 274/03 for possession of suit land against these defendants that is defendant No. 1 to

9 and the same was dismissed. So also, the appeal preferred from that order also came to be dismissed.

5- As per the plaintiff, the defendant with only intention to prolong the proceeding is filing such kind of applications. Hence, the plaintiff prayed to reject the application.

6- Heard Advocate Shr. S.V. Deshmukh for the plaintiff and Advocate Shri. R.T. Shelke for the defendants.

7- It appears that, My Ld. Predecessor vide order below Exh. 48, has framed the additional issue as to tenancy which is as follows :-

“ Does the plaintiff prove that, his father namely-Khandu was in possession over the land Gat No. 249 (Sy. No. 28) to the extent of 12 Acre 27 Gunthas as a tenant ?”

8- The issue captioned points out only question that, whether the father of plaintiff was in possession over the suit land as a tenant. Taking into Consideration the issue, It appears that, the suit is instituted for declaration of ownership and for perpetual injunction. The suit is filed by son of Khandu against his nephews that is son of Bapusha and Narhari.

9- The plaintiff is claiming his ownership and possession over the suit property by way of oral partition. As per the plaintiff his elder brother Bapusha orally partitioned the suit property and the plaintiff came to the possession of 1 H. 70 R. property. The issue now pertaining only to the dispute between heirs of Khandu.

10- This suit is not dealing with tenancy between landlord and tenant. Infact as per the plaintiff himself, he is claiming ownership through oral partition. Defendants No. 1 to 9 are denying the ownership of plaintiff on the ground that, the suit property was exclusive property of Bapusha. Therefore, the plaintiff is having no concern with the suit land.

11- The issue Whether Mr. Khandu was tenant of the property or not have no bearing on this case. The plaintiff himself has pleaded that, the suit land was alienated for the consideration of Rs. 7000/- and out of that, Rs. 5000/- were paid jointly by Khandu and Bapusha, thus as per him, as the consideration was paid jointly, the plaintiff is having share in the suit property.

12- On these background, the finding of issue as to the tenancy have no bearing on the merits of this case. Infact, this case is not dealing with issue between land lord and tenant. Apart from that, this case involves complicated questions of facts and law, in which situation the Civil Court has jurisdiction to decide the same. Therefore, there is no need to refer this suit to the tenancy court. In the result this application will not succeed. Thus, I proceed to pass the following order :-

ORDER

- 1- The application (Exh- 49) is rejected.

- 2- In the peculiar facts and circumstances of the suit no order as to costs.

Place :- Ahmedpur.

Date :- 05/07/2018

(A.B. Jawale)

3rd Jt.Civil Judge, J.D. Ahmedpur.