

R.C.S. No. 20/2016  
Prakash Vs. Vishwas

**ORDER BELOW EXH. 27**

1] The defendant has raised objection as regards to lying original jurisdiction with this court in existence of specific and express bar under section 85 of the Maharashtra Tenancy and Agricultural Land Act 1948 (for short, 'the Tenancy Act'). It is the contention of defendants that the plaintiffs have directly or indirectly challenged the Tenancy Certificate 'M' granted in favor of defendant by the competent Revenue Authority under its own jurisdiction. Since the subject matter is pertaining to the issue of tenancy which is required dealt with in accordance with the provisions of the Tenancy Act and only by only specified Authority provided thereunder. They lastly prayed for grant of application and rejecting the plaint.

2. The plaintiffs have resisted the application by their Written Say (Exh. 30). As per their contention, the defendant has played fraud and forgery for obtaining such Tenancy Certificate as well as mutating his name in the revenue record by joining hands with some officials or employees working in the department which is challenged under this suit. Looking at the nature of dispute involved in the matter, none other than the Civil Court exercising its inherent jurisdiction has power to deal with such dispute. As such, the subject matter cannot be considered within ambit of the provisions of the

Tenancy Act as alleged by the defendant. They lastly prayed for rejection of the application.

3. I have already framed the following preliminary issue at Exh. 1.

Sr. No.	Issues	Findings
1	Whether this court has jurisdiction to entertain and try the suit in view of section 85 of the Maharashtra Tenancy and Agricultural Land Act ?	Yes.
2	What order ?	Application is rejected.

#### **AS TO ISSUE NO. 1**

4. Heard both sides and also gone through the documents placed on record. True that the plaintiffs have directly or indirectly challenged the Tenancy Certificate 'M' granted in favor of defendant by the competent Revenue Authority under its own jurisdiction as well the mutation entries pertaining to the subject matter but on the ground of fraud and forgery. Had it been the plaintiffs challenged the validity of the Tenancy Certificate or mutation entries directly and without taking ground of fraud and forgery, this court would have definitely no jurisdiction to take cognizance into the matter as per section 85 of the Tenancy Act treating the subject matter as purely

falling under the provisions of the Tenancy Act. However, this is not the situation in the case in hand.

5. The defendant has also not pointed out any legal provision or otherwise which would show that the dispute of fraud and forgery can also be entertained by the Authority specified under the Tenancy Act. In absence of such remedy available to the plaintiffs, the contention of plaintiffs that this court has power to invoke its inherent jurisdiction, rests with it, for taking cognizance of the matter in hand having regard to its different nature seems to be proper and more probable than the case of defendant for raising the objection.

6. No doubt, the Certificate issued under section 32M of the Tenancy Act is conclusive evidence of purchase as laid down in **Shrikant Gangaram Teli Vs. Bhaskar Narayan Kuvalekar & Ors.** [1998(3) Mh. L. J. 542] as relied by the defendant but the facts of fraud and forgery were not involved in the said case law as appear in the case in hand. Hence, the said case law cannot be made applicable to the case in hand.

7. The plaintiff in order to prima facie substantiate the ingredients of fraud and forgery pointed out the passing of Mutation Entry no. 86 wherein the name of deceased father of plaintiffs namely Shiva Balaji Thombare is found. It further discloses that deceased Shiva during his lifetime was served with the Notice in respect of the

suit property particularly in the year 1962 treating him as tenant thereof. Likewise, the name of Shiva is also found place in the Agricultural Book issued by the Revenue Authority in respect of the suit properties. Not only this, he had also borrowed loan from the bank/society as against the suit property for some time. Besides, the revenue officers by addressing a letter dated 27-04-2016 to the plaintiffs have showed their inability to furnish copies of record and proceeding of the inquiry wherein the Tenancy Certificate 'M' was granted on the ground of non-availability of the original record for misplacement.

8. All aforesaid the materials are prima facie and without taking into consideration the defence taken by the defendant, the possibility of involving the germs of fraud and forgery as claimed by the plaintiff in the subject matter in hand cannot be ruled out. As such, the opportunity of being heard will have to be given to the plaintiffs to establish their alleged case by invoking remaining inherent jurisdiction lying with this Court.

9. In view of the above discussion, I find substance in the contention of plaintiffs. Consequently, I hold that this court has inherent jurisdiction to entertain and try the suit. Hence, I answer Issue no. 1 in the affirmative.

**AS TO ISSUE NO. 2**

10. As the subject matter is found within the inherent jurisdiction of this court, the objection raised by the defendant will have to be discarded by rejecting the application in hand. Hence, in answer to point no. 2, I pass the following order.

**ORDER**

The application (Exh. 27) is rejected.

Place : Pali

Date : 19/12/2017

Civil Judge Junior Division, Pali