

ORDER BELOW EXH.01 IN REGULAR CIVIL SUIT NO.15/1989.

1. Perused the record and proceeding. This suit is pending from long for awaiting decision of Tenancy Court in view of reference made by the then Civil Judge (J.D.) in the year 1998. In response to this no decision is received till today from Tahasildar, Vengurla. Repeatedly the letter and reminders were issued to Tahasildar, Vengurla but, there is no response.

2. On the back ground of above, I have gone through the original suit of the plaintiff and written statement filed by defendants and all other relevant documents filed on record and it is noticed that, this suit is filed by plaintiff simpliciter for injunction and in such suit there is no necessity to frame a tenancy issue and consequently it is not necessary for any reference to Tenancy Court. Further, in view of authority of our Hon'ble Bombay High Court in the case of Maruti Shambha Vs. Parshuram Kortakar, reported in 1983 Mh.L.J. 958, in the suit of simpliciter injunction the framing of tenancy issue and reference made to that effect for tenancy decision is uncalled. In this case Hon'ble High Court quashed all the decisions passed by three authorities Viz. Maharashtra Revenue Tribunal, the Sub-Division Officer and the Additional Tahsildar and also the reference made by Civil Court is also quashed by observing that,

“In suit filed by plaintiff for injunction restraining the defendant from obstructing his possession and in which the defendant is having claimed to be a tenant, the reference made by Civil Court was uncalled.”

Relying on this decision, Our Hon'ble Bombay High Court in subsequent case in the case of Smt. Shalan w/o. Nivrutti Pawar Vs. Balu Maruti Pawar and others, reported in 1990 Tenancy Land Decisions of Maharashtra, Page No.336 further held that,

“In the suit for injunction simpliciter by a plaintiff who claims

to be in possession, the plaintiff will be entitled to injunction only if he proves his possession on the date of the suit. If the plaintiff proves his possession on the date of the suit, the status of the defendant, who is alleged to be disturbing the possession of the plaintiff, is wholly irrelevant, because a tenant is not entitled to forcibly dispossess any person in possession against whom the tenant may have a right to claim possession. On the other hand, if the plaintiff in a suit for injunction simpliciter fails to prove his possession on the date of the suit, again, the status of the defendant becomes immaterial.”

3. So, considering the above settled legal principle, in this case I hold that the issue framed below Exh.75 at sr.no.3 is not necessary and consequently the reference made is also uncalled. Accordingly, I call back the said reference and also issue no.3 is deleted. The note to that effect is also made at Exh.75. Inform the concerned Tenancy Court, Vengurla accordingly. As the plaintiff is absent and his advocate shri. Pokale is no more, issue notice to the plaintiff for proceeding the matter further. Though the defendants are absent, as their advocate shri. Godkar is present, there is no necessity to issue notices to the defendants. The bench clerk is directed to comply and keep this suit on the proper stage.

Vengurla.

Date:- 29/12/2014.

(D. S. Zanvar)

Civil Judge Jr. Dn., Vengurla.