

-: Regular Civil Suit No.13 of 2005 :-
-: Order below Exh.192. :-

Perused the application and say. Heard both parties at length. This application is filed by defendants No.1,2,3 and 5 for framing additional issue regarding tenancy rights.

2. The plaintiffs filed their say at Exh.193 and contested this application. It is contended that the suit is fixed for evidence of parties. The plaintiffs filed their evidence affidavit on 1/7/2016. The defendant obtained various adjournments for cross-examination of plaintiffs' witness and partly cross-examination is over. The present suit is for injunction simpliciter. It is only to decide in the suit that who is in possession of the suit property, therefore, no need to frame tenancy issue suggested by the defendants. Hence, prayed to reject the application.

3. Learned Adv.Shri. Prabhu argued on behalf of the defendants that the issues are to be framed on the basis of the pleadings and material propositions of the facts. The defendants raised their plea in written statement (Exh.22) and amended written statement (Exh.131) that the suit property is occupied by the defendants as a tenant since 1926. It is the contention of the defendants in their written statement that they are in possession of the suit property and cultivating the same. However, while framing issues, the issue regarding tenancy right is not framed. The essential requirements to establish the tenancy right are brought on record by the defendants. He relied on the following judgments.

01) Rajaram Totaram Patel Vs. Mahipat Mahadu Patel, 1967 AIR (Bom) 408, wherein Hon'ble Bombay High Court has held that,

“but if the defendant to the suit pleads that he is a tenant or a protected tenant or a permanent tenant and an issue arises whether he is such a tenant, Court must refer the issue to the Mamlatdar for determination, and must stay the suit pending such determination, and after the Mamlatdar has decided the issue, the Court may dispose of the suit in the light of the decision of the Mamlatdar.”

“This decision also suggests that the question whether the person is a tenant or not is limited to the narrower issue whether a person is a tenant of a particular landlord irrespective of the question whether the issue is raised by the landlord or a tenant or a co-tenant or any other person. It will still be a question whether a person is a tenant. Therefore, in our view, the question contemplated in section 70(b) is not limited to an issue between the landlord and the tenant. The correct view in this respect was stated by the Chief Justice Chainani in Special Civil Application No.1617 of 1963. That was also a case where the dispute was only between the tenants. What the learned Judges held was:

“If, therefore, any Civil Suit involves any issue which under the Act is required to be decided by the Mamlatdar the Civil Court must refer it to the Mamlatdar for determination. Under clause (b) in section 70 it is the duty of the Mamlatdar to decide whether a person is a tenant. The question whether the petitioner or the Respondents were tenants has therefore to be decided by the Mamlatdar.”

“It is the function of the Mamlatdar to decide whether a person is a tenant and when the Legislature has used that expression we can see no reason curtailing its amplitude by saying that the issue which the Mamlatdar has to decide is only an issue whether a person is tenant of a particular landlord. Whenever the issue is raised in any suit whether a person is a tenant, by whomsoever it is raised, the issue will have to be decided by the Mamlatdar.”

02) Pandu Dhondi Yerudkar Vs. Ananda Krishna Patil,1975 AIR (BOM) 52, wherein Hon'ble Bombay High Court has held that,

“Section 35 of the Act bars jurisdiction of the Civil Court to decide or determine inter alia the question whether a person is a tenant or not of any agricultural piece of land and if such an issue arisen in a suit, under Section 35-A it becomes obligatory on the part of Civil Court to refer such issue for determination by the authorities under the Act, for decision and the Court is required to stay the suit. If an issue as regards tenancy is raised by the Court then looking to the language of Section 35-A it becomes obligatory on the part of the Civil Court to refer such issue for determination by the authorities under the act.”

“When a vague plea is made by the defendant contending that is made by the defendant contending that he is a tenant of the land, the Court should hesitate to frame such an issue on such a vague plea, unless the defendant is such able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. If in spite of such

particulars being asked for the defendant is unable to furnish the same, the Court should not raise an issue on a vague plea that he, the defendant, is a tenant of any particular piece of land. Normally the rules of pleadings require that these particulars are the minimum particulars which a man must furnish before he can request the Court to frame an issue as regards the claim made for tenancy.”

03) Anathula Sudhakar Vs. P. Buchi Reddy, 2008 AIR (SC) 2033, wherein Hon'ble Supreme Court has held that,

“But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession.”

“As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.”

4. On the contrary, learned Adv.Shri. Bhanage for the plaintiff argued that this is the suit for injunction simpliciter. No need to frame the issue about the determination of tenancy right and refer it to proper authority. In the simpliciter suit the plaintiff has to prove his possession only. Hence, prayed to reject the application. He also relied on the following judgments.

01) Shri.Gramdeo Laxmi-Narayan Devalaya Vs. Smt. Shali Datta Devidas & Ors, 1997(2) ALL MR-59, wherein Hon'ble Bombay High Court has held that,

“Record of Right- Entry in- Presumption arising therefrom- Cannot be rebutted by affidavitory evidence.”

02) Uttam Sambha Deshmukh and others Vs. Yamunabai w/o. Chandrabhan Bhojar and others, 1998(2) Mh.L.J., wherein

*Hon'ble Bombay High Court has held that,
"Issue regarding tenancy neither arising now necessary for adjudicating controversy- Making of reference to competent authority not warranted."*

03) *D.M.Deshpande and others Vs. Janardan Kashinath Kadam (dead) by L.Rs. And others, 1999(1) Mh.L.J.,* wherein Hon'ble Bombay High Court has held that,

"In absence of material particulars regarding tenancy, no issue could have been framed or referred to the Tahasildar-- Order made by the High Court directing framing of issue relating to tenancy and referring the same to Tahasildar set aside."

04) *Thomas Anthony Vs. Varkey Varkey, AIR 2000 Supreme Court-1,* wherein Hon'ble Supreme Court has held that,

"Reference to Land Tribunal- Question whether a person is a tenant or a kudi kidappukaran- Plea raised, illegal only with a view to procrastinate litigation- Cannot be referred by Civil Court to the Land Tribunal."

05) *Anandrao Bandu Jadnav & another Vs. Bibijan, AIR 1983 BOMBAY-32,* wherein Hon'ble Bombay High Court has held that,

"Civil P.C. (5 of 1908), O.14, R.5(2)- Striking out issues- Issue relating to tenant framed on basis of vague plea of defendant who was unable to show when tenancy was created, by whom it was created and terms on which it was created- Held, issue framed was liable to be deleted under O.14, R.5(2). AIR 1975 Bom.52, Referred."

06) *Govind Jagannath Samarth Vs. Pundlik Jagannath Samarth and others, 1996(2) Mh.L.J.,* wherein it is held that,

"Before the merits are considered, it will be worthwhile to see the main prayer in the suits. The prayer in the suits is for a declaration that the plaintiff, being a tenant, the defendants have no right to dispossess him. I also went through the plaint, the copy of which was fairly supplied by Shri Kotwal, learned Counsel for non-applicant/plaintiff. The whole plaint suggests that the plaintiff was in possession of the suit lands in his capacity as a tenant as the tenancy was created by the landlords, the present applicants. The whole claim, thus, in the plaint depends upon the plea of tenancy. Had that been the case and had the simple declaration been claimed that the plaintiff could not be dispossessed from the suit lands, the matters would have been all right, but the declaration claimed in the suit is in the typical manner whereby a declaration of the status of tenancy is also claimed. What is claimed is that the plaintiff being a tenant of the suit lands could not be dispossessed by the defendants."

5. At the outset, it reveals that, my learned predecessor framed issues at Exh.109 on 28/8/2007. Since then there are some interlocutory orders challenged before the Hon'ble High Court. Considering the issues there is no issue regarding tenancy is framed. Only the issues about possession and whether possession obstructed by the defendants are framed. Admittedly, the suit property is owned by Shri Dev Vetoba Vahivatdar Committee. The plaintiffs came with their specific pleadings that the suit property is in their possession since their father and the defendants have no concern towards the suit property. However, they are obstructing their possession, hence this suit. The defendants also claimed that they are the tenants in the suit property since 1926 and they are in possession of the suit property.

6. The documents produced on record reveals that plaintiffs' names are recorded to the 7x12 extracts. Initially Govind Balkrishna Yesaji father of present plaintiff, initiated the tenancy proceeding against Shri Dev Vetoba Vahivatdar Committee. However, due to the suit land is the property of trust, it is exempted from the sale under the Tenancy Act. Accordingly village Mutation No.6290 (Exh.9) sanctioned and plaintiffs' names are recorded in 'other rights' column. It also reveals from the rent receipts filed by the plaintiffs at Exh.77/1 (Art.A) that said rent receipts are in the name of plaintiffs' father and plaintiff No.1. The defendants are claiming that they are tenants of the suit property. However, there is no any documentary evidence to show that they are the tenants in the suit property. On the contrary, the plaintiffs prima-facie show that they are the tenant in the suit property. Admittedly, the suit is for injunction simpliciter. In injunction suit the plaintiff has to prove his possession on the date of the suit and not the title. If he succeed to establish his possession over the suit property, he will be entitled for injunction. If the plaintiffs failed to establish their possession over the suit property, the suit will deserve to be dismissed. In the suit for injunction the issue of title need not to be decided.

7. It is significant to note here that the present suit is pending since 2005. The defendants filed their written statement at Exh.2 on 21/3/2005. Issues Exh.109 are framed on 28/8/2007 and the present application is filed on 23/12/2016 i.e. after 9 years lapsed since after framing of issues Exh.109. The plaintiff filed his examination-in-chief affidavit (Exh.188), partly cross-examination is conducted on 14/7/2016. Thus, it reveals that the defendants filed this application to prolong the matter. If the defendants have grievance against issues framed at Exh.109, immediately they could be file such type of application. However, the defendants waited for more than 9 years and filed this application to frame issue regarding tenancy. I am of the opinion that, it is not necessary to frame issue of tenancy in the suit for injunction simpliciter. There is no merit in this application. The application is liable to be rejected. In the result, I pass the following order.

-: ORDER :-

01. The application stands rejected with costs.

Date :- 28/11/2017.

(Sadanand Patil)
Civil Judge, (J.D.), Dodamarg.
Deputation at Civil Court, Vengurla.