



CNR NO. MHSI70000672009

Order passed below Exh. No.94
(I.A. No.5/2023) in R.D. No. 4/2009

The present application is filed by the applicant for framing of issue.

2. The applicant has contended that he has filed lease agreement dated 26/04/1930. In the said agreement, the disputed area and disputed house are shown to be given on lease to the applicant. Therefore, it is necessary to refer the matter to the competent authority to decide the tenancy rights of the applicant under section 85-A of the Bombay Tenancy and Agricultural Lands Act. Therefore, it is prayed that issue be framed that whether the applicant proves that he is a tenant of the disputed property and house.

3. The decree holder has resisted the application by filing say on overleaf of the application. It is contended that the alleged tenancy agreement was executed prior to enactment of the Bombay Tenancy and Agricultural Lands Act. The application is preferred only to delay the execution proceeding. The application is not legal. Therefore, prayed to reject the application.

4. Heard learned advocate Smt.N.V. Mayekar for the applicant, learned advocate Smt. A. A. Mondkar for the decree holder and learned advocate Shri.M.B.Sukali for the judgment

debtor. The learned advocate for the applicant has submitted that the applicant was not having knowledge regarding the second appeal. The decree holder has not intentionally made him party. He is a tenant of the disputed land and house. Therefore, it is necessary to frame issue regarding the issue of tenancy and refer the matter to the competent authority.

5. The learned advocate for the judgment debtor has submitted that the applicant has filed rent receipt and rent agreement as per the order of the Hon'ble High Court of Bombay. This court is not having jurisdiction to decide tenancy issue, therefore, it is necessary to frame the issue as per section 85-A of the Bombay Tenancy and Agricultural Lands Act.

6. The learned advocate for the decree holder has contended that the applicant nowhere pleaded in the application filed at Exh.79 that he is having tenancy right under the Bombay Tenancy and Agricultural Lands Act. He has only claimed that he is a tenant. As per the contents of the application at Exh.79, issues were framed. The applicant has not challenged the said order. Therefore, the application filed by the applicant is not tenable and liable to be rejected.

7. In light of arguments advanced by both parties, I have gone through the record. From the perusal of copy of the decree, it appears that the judgment debtor has filed the suit for removal of encroachment, restoration of possession and perpetual injunction. In the said suit, there was no issue of tenancy right involved. On perusal of record, it further appears that the

applicant namely Ulhas @ Vilas Narayan Dandkar contended that the applicant along with Kumudini Dandkar, Pramila Hindalekar, Alka Bhojane, Sneha Dandkar and Saish Dandkar are having possession of the disputed property. The disputed land and house were received through lease agreement and rent was paid to the father of the decree holder. In the said application, the applicant has contended that his forefather and he was residing in the house as a tenant. Accordingly, my learned predecessor has framed the issue by passing an order below Exh.79 dated 31/01/2022. In the said application, the applicant has nowhere claimed tenancy rights under the Bombay Tenancy and Agricultural Lands Act.

8. From plain reading of Section 85-A, it appears that if any issues which are required to be settled, decided or dealt with by any competent authority, under the Bombay Tenancy and Agricultural Lands Act, 1948 arise, the Civil Court shall stay the suit and refer such issues to such competent authority for determination. However in the instant case the nature of objection raised by the applicant is for determination of tenancy rights. No issue, which requires adjudication by the competent authority under said Act of 1948 arises in between the parties in the present case. Moreso, the dispute appears to be between the decree holder and applicant interse for their status as a tenant and for that dispute applicant cannot resort to provisions laid down under section 85-A of the Bombay Tenancy and Agricultural Lands Act. Thus, the application is liable to be rejected. Accordingly, I pass following order.

ORDER

1. The application at Exh.94 stands rejected.
2. Both the parties bear their own Costs.

(Pronounced and dictated in open Court.)

Place : Malvan
Date : 05/08/2023

Mahesh R. Devkate
Jt. Civil Judge Jr.Dn., Malvan.