

ORDER BELOW EXHIBIT - 29

- 1] Present application is filed by the defendant no. 1B and 5 for rejection of the plaint under Order VII rule 11 of the Code of Civil Procedure.
- 2] It is the case of the plaintiff that, original survey no. 92/1 i.e. Gat no. 155 area ad-measuring 4H. 6R. Situated at Degaon, Tal. Pandharpur is originally owned by Anant and Ramchandra Umbrajakar (hereinafter for the short "suit property"). The original owner gave the said property on lease to one Narayan Uplap. Thereafter Narayan Uplap sublet the said suit property to one Parubai Genu Ghadage in the year 1946/47. Thereafter, she became the protected tenant of the suit property. Said Parubai died on 08.08.1974. Thereafter Shivaji Dhondiba Ghadage and Ramchandra Genu Ghadage cultivate the half portion as heirs of the Parubai.
- 3] Meanwhile original owners are also died and suit property devolved in the name of their heirs. On of the heirs of original owner filed one civil suit bearing registration no. 425/2000 against Shivaji Dhondiba Ghadage and Shivaji Sugar Mills. Said Shivaji is brother of plaintiff and he holds tenanted right as joint family manager. In the said suit Learned C.J.J.D. Pandharpur passed ex-parte decree and ordered to deliver vacant possession of suit property to said Nagesh Umbrajkar. But, according to plaintiff possession as ordered was not delivered to said Nagesh Umbrajkar.
- 4] On perusal of record and after hearing argument, it is clear that Ramchandra and Dhondiba are brothers, deceased Parubai was their mother. Balasaheb Ramchandra Ghadage is son of Ramchandra and Shivaji Ghadage (joint family manager) is son of Dhondiba and brother of present plaintiff.
- 5] Further, it is alleged that said Balasaheb Ramchandra Ghadage entered in to compromise with heirs of original owner and surrendered all the rights as tenant in favour of heirs of original owner in suit bearing

registration number 466/2017, on his and on behalf of heirs from Ramchandra.

6] Thereafter, it is alleged that, said Balasaheb filed application before Tahsildar Pandharpur bearing tenancy case number S.R. 2/2022. In the said application said tribunal allowed the said application and ordered to issue 32(m) certificate in favour of him on payment of Rs. 410. According to plaintiff said order is illegal. Plaintiff was not party to the said proceeding. Thereafter, plaintiff filed tenancy appeal before S.D.O. Pandharpur but his appeal was dismissed and accordingly on 09.02.2023 sale deed was executed in favour of defendant no. 1 under 32(G) of Tenancy Act.

7] Further, it is case of the plaintiff that he never delivered the vacant possession of the suit property, and he is in possession of suit property. Then also defendants with help of said sale deed are trying to obstruct the peaceful possession of the plaintiff over the suit property. Therefore, he brought present suit for declaration that, said sale deed is not binding upon his share and for restraining the defendants from causing interference to the peaceful possession of plaintiff over the suit property.

8] Defendant no. 1B and 5 filed present application and prayed for rejection of the plaint under Order VII Rule 11 of C.P.C. It is the contention of the defendants that, plaintiff is claiming the possession over the suit property as a tenant, however Tahsildar Pandharpur has issued certificate under section 32(M) of Maharashtra Tenancy and Agricultural Land Act in favour of the deceased Balasaheb Ghadage i.e. predecessor in title of the defendant no. 1B, therefore present suit is barred by section 85 of Maharashtra Tenancy and Agricultural Lands Act. In support of his claim, Ld. Advocate for defendants argued that, entire pleading of the plaintiff is based on the tenancy proceeding held before Tahsildar Pandharpur, according to him, if at all the

present plaintiff has grievance against the order of the Tahsildar, he should challenge it in appeal before appropriate authority, but instead of filing appeal before appropriate authority present plaintiff filed present suit for declaration that sale deed executed on dated 09.02.2023 is not binding on his share in the suit property. But according to him, plaintiff is not in possession of the suit property, according to him. Learned CJJD Pandharpur has passed decree in civil suit no. 425/2000 and ordered to deliver possession to Nagesh Umrajkar, hence plaintiff is not in possession and plaintiff has no concern whatsoever with the suit property. Therefore, plaintiff is trying to challenge the decision of Tahsildar in the civil court indirectly by making such prayer for declaration. But according to him, there is bar u/s. 85 of the Maharashtra Tenancy and Agricultural Lands Act. As per section 85 civil court has no jurisdiction to settle, decide or deal with any question which is by or under this act required to be settled, decided by tribunal. Further, no order of the Mamlatdar, tribunal made under this Act shall be questioned in any civil or criminal court. Further, Ld. Advocate for the defendant has relied on following citations :

1. ***Pushplata Narayan Thorbole Vs. Purshottam Dattatraya Prabhu, S.A. no. 448/2014,*** in the said authority it is observed that, the certificate issued u/s. 32(M) must be accepted as document of title, so long as it is not set aside by the competent authority, further it is observed that, the civil court has no supervisory jurisdiction over the tribunal.
2. ***Avinash Sambhaji Jadhav & ors. Vs. Kiran Ramchandra Boravke & Ors. Writ petition no. 9510/2017,*** in the said authority Hon'ble Bombay High Court has observed that, in order to prove tenants possession over the suit property, the issue of tenancy becomes

relevant u/s. 85 of Bombay Tenancy Act and order for framing issue as “whether respondent no. 1 proves that, he is in possession of suit land as tenant ?”

9] *Before proceeding further it is beneficial to go through Order 7 Rule 11 of Code of Civil Procedure, 1908.*

Order VII Rule XI reads as under :

Rejection of Plaint : *The plaint shall be rejected in the following cases:*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9: (Provided that the time fixed by the Court for the correction of valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.)*

10] Following points arise for my determination along with finding as under:

Sr. No.	Points	Findings
1.	Whether the suit appears from the statement in the plaint to be barred by section 85 of Maharashtra Tenancy and Agricultural Lands Act ?	In the Negative.
2.	What order ?	As per final order.

REASONS

As to Point no. 1 :-

11] Perused the plaint, documents filed along with plaint. Admittedly, it is settled law that while deciding application under order VII rule 11 only plaint and documents filed with plaint needs to be scrutinized.

12] At the outset, I would like to mention that, in the instant suit plaintiff is claiming relief for protection of his possession from causing interference at the hands of defendants. But, on the other hand defendants is denying the fact that, plaintiff is in possession of suit property. It is contention of the plaintiff that, in view of decree passed against Shivaji Ghadage, he was asked to deliver possession to the Nagesh Umbrajkar. Further, plaintiff averred that, they have never delivered the possession to Nagesh Umbrajkar or any other person on his behalf and they are in continuous physical possession of suit property. However, it is gathered from the averments made in the plaint that, deceased defendant no. 1 has obtained certificate under section 32(M) of Maharashtra Tenancy and Agricultural Lands Act, by claiming himself as a tenant of the suit property. Therefore, it shows factum of physical possession over the suit property is in controversy between the parties.

13] Further it is contention of the defendants that, plaintiff is trying to challenge the decision of the Tahsildar Pandharpur before this court, but there is bar u/s. 85 of Maharashtra Tenancy and Agricultural Lands Act, to decide, settle any question which is required to be decided by the competent authority. On this point, it is pertinent to note that, the Maharashtra Tenancy and Agricultural Lands Act regulates the relationship between landlord and tenants in agricultural lands and seeks to protect the rights of tenants. Further, it is pertinent to note that, civil courts have jurisdiction to try all suits of civil nature unless the cognizance of suit is barred either expressly or impliedly. It means it is general rule that, civil court has jurisdiction to entertain civil dispute, whereas its exclusion is an exception. Further, it is settled principle of law that, exclusion of jurisdiction of civil court cannot be readily inferred. Whenever the defendant sought for rejection of the plaint on the ground that, special statute provide for bar of jurisdiction. In such circumstances, it is expected that if the statement made in the plaint discloses ex-facie the grounds laid down for bar of jurisdiction are present otherwise the said question has to be adjudicated by trial. In the facts of instant matter the factum of physical possession is crucial to determine the controversy between the parties. The plaintiff is claiming his continuous possession over the suit property. At this stage of the suit it can not be overlooked that, initially both plaintiff's family and defendants family were on equal footing to claim right of enjoyment of the suit property. In the instant suit plaintiff does not claim relief of declaring him as a tenant. Further, the averments in the plaint discloses that, real owner had not initiated the proceeding to recover possession by filing execution application to execute decree for delivery of possession. However, deceased defendant no. 1 was declared tenant under provision of Bombay Tenancy and Agricultural Lands Act. Further, it reveals that, the plaintiff is claiming his continuous possession over the suit property

in-spite of issuance of said certificate under section 32(M) of the Maharashtra Tenancy and Agricultural Lands Act. Further, plaintiff seeks for relief of declaration and injunction on the basis of his possession. I have also gone through the cited authorities by the defendants. In Prabhu's case it is held that, 32(M) certificate is document of title, the civil court have no supervisory jurisdiction over the tribunal, but in the case in hand, present suit is filed by the plaintiff for declaration and injunction, plaintiff has not asked for declaration that, certificate issued by competent authority is null and void, therefore ratio laid down in the said authority is not going to help the defendants. Further, in Avinash Jadhav's case relates to referring the case u/s. 85A of Maharashtra Tenancy and Agricultural Lands Act to the competent authority for determination of the fact of tenant, therefore this is also not helpful to the defendant.

14] Further, Ld. Advocate for the plaintiff submits that, neither the plaintiff nor his brother Shivaji Dhondiba Ghadage was party in the proceeding held before Tahsildar Pandharpur in tenancy case no. S.R./02/2022 which was decided on 21.12.2022. Therefore, plaintiff by way of present suit is claiming relief of declaration that, said sale deed is not binding on his right of possession over the suit property and consequential relief of injunction.

15] Therefore, it is crucial to note that, in the instant suit plaintiff is not claiming for issuance of 32(G) or 32(M) certificate in his favour, further he has not asked for declaration that he is tenant. Plaintiff is claiming his existing civil right on the basis of his physical possession over the suit property, he has not asked for declaring him as tenant, he has also not asking for declaring the certificate issued by Tahsildar Pandharpur u/s. 32(M) of Maharashtra Tenancy and Agricultural Lands Act is null and void. Therefore,

I am of view that, the statement made in the plaint ex-facie does not show that suit is barred under section 85 Maharashtra Tenancy and Agricultural Lands Act. In such circumstances, in the facts of instant suit in order to determine whether the bar u/s. 85 of Maharashtra Tenancy and Agricultural Land Act is attracted or not requires to be adjudicated by trial. Hence, I hold that, statement made in the plaint does not show that, suit is barred. Hence, I answer point no. 1 in the negative.

As to point no. 2 :-

16] In view of findings as to point no. 1 in the negative, it is clear that, plaint is not liable to be rejected. Therefore, application deserves to be rejected. Hence, I pass following order:

ORDER

- 1) The application below Exh. 29 is hereby rejected.
- 2) Costs in cause.

Date: 14/08/2024.

(A. S. Sonwalkar)
5th Jt. Civil Judge Junior Division,
Pandharpur.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

Name of the Stenographer - M. P. Gheradi.

Court - 5th Jt. CJJD & JMFC, Pandharpur.

Date of Judgment/Order - 14/08/2024

Judgment/Order signed by the Presiding Officer on - 14/08/2024

Judgment/Order uploaded on - 16/08/2024