

**R. C. S. No. 223/1975**

Nivrutti Sakha Waghmare & Ors. ---- **Plaintiffs**  
**Vs.**  
Khashaba Dadu Kumbhar & ors. ---- **Defendants**

**Order Below Exh. 206**

1. The plaintiffs have filed this application to call back the proceeding sent to the tenancy Court to decide issue of tenancy.

2. Defendants have filed say at Exh. 207 and they have taken strong objection with prayer to reject the application.

3. Heard both sides at the length. It is submitted by the plaintiffs advocate that, the issues were framed at Exh. 73. Out of those issues issue No. 3 and 6 A are related with tenancy. To decide these issues the proceeding was referred to tenancy Court and it is pending in the tenancy Court. In fact the defendants have pleaded that defendant No. 2 was tenant of defendant No. 1 in the suit property. This pleading is in between defendants themselves and it is not related with the right of the plaintiffs. Therefore, the proceeding sent to tenancy Court needs to be recalled.

4. Advocate for the defendants submitted that defendant No. 2 had cultivated land as tenant and thereafter Shivaji Dnyanu Kumbhar and his legal heirs have acted as tenant. Therefore, to decide the point of tenancy the reference is made to tenancy Court and it cannot be recalled.

5. On going through the proceeding it is seen that the issues were framed in the year 1979 at Exh. 73. In the written statement Exh.

53 in para 4 and 5 the pleading about the tenancy is made. Thus, defendants have stated their status as tenant which is disputed by the plaintiffs. The legal heirs of defendant No. 2 have also raised their status as tenant in their written statement at Exh. 117.

6. Exh. 204 is letter written by the Tahsildar i.e. tenancy Court dt. 26/09/1990 is about bringing the legal heirs on record. In the proceeding before Tahsildar plaintiffs have admitted the status of defendants as tenant.

7. In the present proceeding the plaintiffs had filed application at Exh. 127 for sending this proceeding to the tenancy Court. The plaintiffs had filed similar application at Exh. 165. Now, the plaintiffs have withdrawn these applications by giving pursis Exh. 246.

8. From the record it appears that proceeding before tenancy i.e. Reference No. 18/1979 has been commenced on the reference of these issues. As per Sec. 85 and 85 A of Bombay Tenancy and Agriculture Lands Act the civil Court has no jurisdiction to settle the issue of tenancy and the suits involved the issues of tenancy required to be decided by the tenancy Court. Thus, the issue of tenancy referred to the tenancy Court is now acted upon.

9. Advocate for the plaintiffs submitted that as per Order 14 Rule 5 (4) of Civil Procedure Code the court has power to amend or strike out the issues. In that respect he relied on the decision in **R. B. Bharatha Charyulu, Vs. R. B. Alivelu Manga Thayaru**, reported in **AIR 1996 Andhra Pradesh 238**.

10. Advocate for the defendants relied on the decision in **Pandu**

*Dhondi Yerudkar & Ors. Vs. Ananda Krishna Patil* reported in *AIR 1975 Bombay 52*. In which Hon'ble Bombay High Court has observed that *when issue regarding tenancy is framed it is not permissible to direct defendants to produce evidence as the jurisdiction of Civil Court is taken away.*

He further relied on the decision in *Gundaji Satwaji Shinde Vs. Ramchandra Bhikaji Joshi* reported in *AIR 1979 S. C. 653*. In which Hon'ble Apex Court has observed that *combined effect of Sec. 70, 85 and 85 A of Bombay Tenancy and Agriculture Land Act that the Civil Court is under statutory obligation to refer the issue of tenancy to the competent authority under the tenancy Act.*

He further relied on the decision in *Dahya Lala and Ors. Vs. Rasul Mahomed Abdul Rahim & Ors.* reported in *AIR 1964 S. C. 1320*. In which Hon'ble Apex Court has observed that, *the mortgagee in possession of the property has inducted the tenant then the tenant of such mortgagee is protected and cannot be evicted.*

He further relied on the decision in *Madhumati Atchut Parab Vs. Rajaram V. Parab and Ors.* reported in *2009 (4) Mh. L. J. 668*. In which Hon'ble Bombay High Court has observed that, *where the relationship of tenancy is alleged by one party and denial by other then question falls to be considered and the decision of question is left exclusively to be determined by the Mamalatdar.*

He further relied on the decision in *Bernardo and Ors. Vs. Mrs. Esperanza Miranda and Ors.* reported in *2014 (2) ABR 53*. It is observed that, *the question of tenancy cannot be decided by the Civil Court*

*and in case such issue arises the issue has to be referred to the learned Mamalatdar. The issue framed in respect of tenancy cannot be deleted.*

11. In the present proceeding though the plaintiffs have filed pursis at Exh. 246 and have withdrawn the applications Exh. 127 and Exh. 165 the issue of tenancy is already referred to the tenancy Court. The issue of tenancy referred to tenancy Court is acted upon. In view of the observations made in the decision cited by the advocate for the defendants the issue of tenancy referred to tenancy Court cannot be recalled. Therefore, this application liable for rejection. In the result, I pass the following order.

**ORDER**

1. Application is rejected.

(Dictated and pronounced in open Court)

Dt. 15/10/2016  
Karad.

**(P. A. Savadikar)**  
Civil Court Sr. Dn. Karad.

Ganesh D. Jadhav,  
Stenographer (L.G.)