

COMMON ORDER BELOW EXH. 81 & 84

(Dt.12-06-2014)

R.C.S.No. 176/2008

Bapurao Lambe .Vs.Haribhau Katayat.

1. In view of direction given in Writ Petition No. 5974/2012 given by their lordships of Hon'ble High Court, bench at Nagpur and the submissions made by both sides I am deciding application Exh. 81 and 84 a fresh. The original suit is for cancellation of lease deed dt. 25-04-1917 and for possession of suit field . It is the contention of plaintiffs that defendants and their forefather have breached the conditions stated in the lease deed dt. 25-04-1917 which was prepared for 100 years. On the other hand defendants have resisted the suit claim by contending that neither them nor their forefather have breached any condition of lease deed dt. 25-04-1917. It is the contention of defendants that by virtue of legal provision of Bombay Tenancy Agricultural Land (Vidarbha Region) Act,1958 they have acquired tenancy rights as a protected tenants of the suit field. Considering rival pleading put forth by both sides issues were framed by my learned predecessor Shri Milind A. Bhosale as per Exh. 27 dt. 21-05-2007.

2. Thereafter on 23-11-2011 vide application Exh. 81 defendants applied for framing additional issues by referring the provision of Bombay Tenancy Agricultural Land (Vidarbha Region) Act, 1958. After hearing both sides my learned predecessor Shri S.L.Phule by considering the provision of Bombay Tenancy Agricultural land (Vidarbha Region) Act, 1958 framed one additional issue at Exh. 27 dt. 7-12-2011. Again from the record it goes to show that thereafter vide application Exh. 83 the defendants have applied for referring additional issue no. 6 for decision to competent authority. However while deciding application Exh. 83 my learned predecessor again framed additional issues no. 7 to 9. As

the court has framed additional issues no. 7 to 9 hence the plaintiffs vide application Exh. 84 have applied to recast issues and prayed for delating issue no. 6 to 9. After giving opportunity to both sides my Ld. Predecessor Shri S.L.Phule vide order dt. 20-06-2012 rejected application for recasting issues and for delating issues no. 6 to 9.

3. While deciding application Exh. 81 and 84 a fresh, sufficient opportunity for hearing has been given to both sides. Heard Ld. Counsel for both sides at considerable length. During argument Ld. Counsel for defendants Mr. V.D.Kedar vehemently argued that the defendants and their forefather have acquired statutory rights over the suit field. It has been argued on behalf of defendants that the defendants and their forefather are the protected tenant and hence it is necessary to frame the issue relating to tenancy and refer the same for decision to tenancy court. On the other hand it has been argued on behalf of plaintiffs that the suit claim is totally based on the lease deed dt. 25-04-1917. It has been argued on behalf of plaintiff that the defendants and their forefather have breached the conditions mentioned in the lease deed dt. 25-4-1917 and hence no question arise s to recast the issues relating to tenancy and refer the same for decision to tenancy court. Again it has been argued on behalf of plaintiffs that some proceeding before tenancy court was initiated between plaintiffs and defendants and it has been finally adjudicated and therefore now it is not necessary again to refer the issue for fresh decision to tenancy court.

4. Considering rival submissions on material point, if we go through the record at hand, during their W.S. it has been specifically pleaded by defendants that the defendants and their forefather have acquired statutory tenancy rights about the suit field. Even though from document Exh. 57 it goes to show that some litigation was pending between the parties before tenancy court,

however from this document it can not be said that the tenancy issue has been finally adjudicated by tenancy authority. Thus considering submissions made by both sides and the documentary material available on record I think to adjudicate the matter at hand it is very necessary to frame an issue relating to tenancy and it is also necessary to refer the same for decision to tenancy court. Hence considering aforesaid discussion I partly allowed the application Exh. 81 and 84 and for deciding real controversy between the parties recasted the issues at Exh.27. Accordingly applications shall stand disposed of.

Sd/-

(S.K.Fokmare)

Joint Civil Judge, Jr.Dn. Samudrapur.

Dt. 12-06-2014

