

MHWS020005372022

ORDER BELOW EXH.11

(Passed on 01.10.2022)

01. By the present application defendants raised an objection under order 7 Rule 11 of Code of Civil Procedure (hereinafter referred as C.P.C.) challenging the maintainability of the suit on the ground of suit is barred by law. The objection raised by defendant is that, the plaintiff has filed present suit for perpetual injunction. The father of the defendant No.1 and 2 namely Balkishan Gowardhan Sharma had declared protected tenant in the year 1957-1958 as per The Act (hereinafter referred as the Act). According to that the name of the father of the defendant No. 1 and 2 was recorded into Revenue Record of Dhanora (Br.) Tq & Dist. Washim. The entry of the name of their father was taken in to the old survey No.36/2. Plaintiff himself admitted the entry of the name of the defendants in 7/12 extract of the suit land in his plaint in para No.7. The plaintiff has known this fact from the beginning that the defendants are declared as a protected tenant of the suit land.

02. The suit property previously was in possession of the father of the defendant as a protected tenant. After the demise of their father, the name of defendant No. 1 and 2 was mentioned in the 7/12 extract of the Gut No.5 of Mouza Dhanora Br. Tq Dist. Washim through the mutation entry No.1043 by the order of Tahsildar Washim. The suit property is tenancy land and the name of defendants is taken as protected tenant in the 7/12 extract of the suit property in the column of

any other rights. Therefore, as per section 124 and 125 of The Act, this court has no jurisdiction to try and decide the present suit. Hence, they prayed to reject the plaint.

03. Plaintiffs have filed their say at Exh. 18 and strongly opposed the present application. They contended that, they have filed the present suit only for perpetual injunction in order to restrain defendants for causing obstruction to their peaceful possession over the suit property. As per The Act, the suit for perpetual injunction can be filed in the civil court. The present suit is purely civil nature therefore, this court has jurisdiction to try the present suit. The father of the defendants had given possession of the suit property to Sopan Narayan Kakade. The entry of the name of the said Sopan Narayan Kakade was taken into the Revenue Record in the Pera-Patruk. Till this date, the defendants have not challenged the said entry.

04. The suit land is not tenancy land. The plaintiff has taken the possession of the suit land as per the order and decree of the civil court from Sopan Narayan Kakade. At the time of taking the possession of the suit land, the said suit land was not in the possession of the defendants. Moreover, defendants had not taken any objection while taking the possession of the suit land. The possession of the suit land was given to the plaintiff through bailiff. Since then the plaintiff is in possession of the suit land. He has filed the present suit only for perpetual injunction in order to restrain defendants from causing obstruction to the peaceful possession of the plaintiffs over the suit land. Hence, he prayed to reject the application.

05. The only point arise for my determination to which I have recorded my findings with the reasons thereto as under :-

**POINTS****FINDINGS**

1	Whether the plaint is liable to be rejected under order 7 Rule 11(d) of C.P.C. against defendant because of bar created under the Bombay Tenancy And Agricultural Lands (Vidharbha Region) Act, 1958 ?	No
2	What order ?	.. As per final order..

**R E A S O N S**

06. I have heard Shri. C.R.Deshpande the learned counsel appeared for defendants and Shri. A.S.Bakliwal the learned counsel appeared for plaintiff.

07. It is argued on behalf of defendants that, suit of the plaintiff is for perpetual injunction in order to restrain defendants from causing obstruction to his peaceful possession over the suit property. The plaintiff, in his plaint, himself admitted that the name of the defendants has been mentioned in the 7/12 extract of the suit land. The father of the defendants had declared protected tenant under the Vidharbha Tenancy Act, 1951 in the year 1957-1958. According to that the name of the father of the defendant No. 1 and 2 was taken into Revenue Record of Dhanora (Br.) Tq & Dist. Washim. The plaintiff has known this fact from the beginning that the defendants were declared as protected tenant of the suit land.

08. It is further argued that after, the demise of their father, their name has been taken in the 7/12 extract as per the mutation entry No.1043. Tahsildar, Washim has been recorded the name of defendant in 7/12 extract of the suit land as a protected tenant being the legal heirs of their deceased father. Since then, they are in possession of the suit land.

Hence, they prayed the present suit is barred by the section 124 and 125 of The Act Hence, the plaint is liable to be rejected under order 7 Rule 11(d) of C.P.C.

09. Per contra it is argued by learned counsel for plaintiff that he has filed the present suit only for perpetual injunction in order to restrain defendants from causing obstruction to his peaceful possession over the suit property. In his plaint, he has only stated that the name of the defendants mentioned in the any other rights columns in the 7/12 extract of the suit land. The possession of the suit land was given to him by the order and decree of civil court through bailiff. Since then, he is in possession of the suit land. There is no bar under section 124 and 125 of the Bombay Tenancy And Agricultural Lands (Vidharbha Region) Act, 1958 to file the suit for perpetual injunction. Therefore, this court has jurisdiction to try and decide the present suit. Hence, he prayed for rejection of the objection.

**AS TO POINT NO.1 & 2 :-**

10. Having heard the learned counsels for both the sides. I have gone through the plaint averments & documents filed by plaintiff below Exh.4. Before going into the merit of the objection, I would like to reproduce the provision of Order 7 Rule 11(d) of C.P.C.. :-

**O7-R-11 :- Rejection of Plaint** :- The plaint shall be rejected in the following cases :-

***(d) Where the suit appears from the statement in the plaint to be barred by any law.***

11. From the plain reading of order 7 Rule 11(d) of C.P.C, it reflects that, the plaint shall be rejected where the suit appears from the statement in the plaint to be bared by any law. It is settled principle of

law that, while deciding to accept or reject the plaint what is to be seen is the averment made in the plaint. Plaintiff is seeking the relief of perpetual injunction in order to restrain defendants from causing obstruction to his peaceful possession over the land bearing Gut No. 52/1 adm. 01H, 05R which is situated at Gondeshwar Tq. & Dist. Washim.

12. On plain reading of the plaint filed by the plaintiff, it is the pleading of the plaintiff that plaintiffs have taken the possession of the suit land as per the order of the Civil Judge Junior Division, Washim in RD.NO. 57/2001 from the possession of the Sopan Narayan Kakade on 22.04.2022. After taking possession of the suit land, the possession receipt was also issued in favour of the plaintiffs. While taking possession of the suit land, the plaintiffs had also taken the help of the police. Also, 5 witnesses were present when the plaintiff was given possession of the suit land. Therefore, the plaintiffs are owner and possessor of the suit land as per the decree of the Civil Court. After taking possession of the said suit land, plaintiffs fixed a board of their name in the suit land and informed everywhere that the said suit land is in possession of the plaintiffs and the plaintiffs have got possession of the said suit land as per the court order.

13. On 24.06.2022, plaintiffs have sown in the suit land. On 26.06.2022 the defendants along with their relatives, friends, servants and 13 to 14 unknown persons came there with sticks and iron rod. They threatened plaintiffs to leave the said land, if they come back they will kill them. They also threatened them they will implicate them in a false case of atrocity and molestation of women. The defendants have caused obstruction to their peaceful possession over the suit land and also removed the board fixed on the suit land. Thereafter, plaintiffs have

lodge complaint in the Gramin Police Station, Washim on 26.06.2022. Therefore, plaintiffs have filed the present suit for perpetual injunction against the defendants.

14. According to plaintiffs, the possession of the suit land is handed over to them by the order and decree of the Civil Court from the possession of the Sopan Narayan Kakade through bailiff and also possession receipt was issued in favour of the plaintiffs. Plaintiffs are in possession of the suit land. The plaintiffs have filed the present suit only for perpetual injunction in order to restrain defendants from causing obstruction to his peaceful possession over the suit land.

15. Plaintiffs have placed their reliance on **the judgement of Hon'ble Bombay High Court, (Nagpur Bench) in Govardhandas S/o Paikaji Brahmane Vs Shridharprasad Rautrai decided on 12<sup>th</sup> December 2003**, wherein, it is observed that from the section 124(1) of the Act, it is clear that the said provision does not bar the institution of a suit. It only bars the Civil Court from deciding or dealing with any question, which is required to be settled, decided or dealt with by the authorities under the Act specified in that section. The above said judgment is useful in the present case. As per the observation made in the above said judgment the provision 124(1) of the Act does not bar the institution of a suit, it only bars civil court from deciding any question which is required to be settled, decided or dealt with by the authorities under the Act specified in that section. As discussed above, plaintiffs have filed the present suit only for perpetual injunction. Therefore, this court has jurisdiction to try and decide the present suit.

16. Section 124(1) of the Act, provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question including a

question whether a person is or was at any time in the past, a tenant and whether the ownership of any land is transferred to, and vests in, a tenant under section 46 or section 49-A or section 49-B which is by or under this Act required to be settled, decided or dealt with by the Tahsildar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control. (2) No order of the Tahsildar or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court. Explanation for the purposes of this section, a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Court Act, 1906.

17. From a bare reading of this provision, it is clear that the said provision does not bar the institution of a suit. It only bars the Civil Court from deciding or dealing with any question, which is required to be settled, decided or dealt with by the authorities under the Act specified in that Section.

18. Sub-Section (1) of section 125 of the Act provides that if any suit instituted in any civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, or dealt with by any authority competent to settle, decide or deal with such issues under the Act the Civil Court should stay the suit and refer such issues to such competent authority for determination. A conjoint reading of these provisions, it is clear that there is no bar to the institution of a suit even if it involves determination of question which is required to be decided by the authorities under the Act. The plaintiffs have filed the present suit for only perpetual injunction and not for determination of question which is required to be decided by the authorities under the

Act. Therefore, this court has jurisdiction to try and decide the present suit.

19. In the light of the relief claimed by the plaintiffs against defendants and considering the civil nature of the suit, I am of the view that, the suit is apparently not barred by the provision of the aforesaid Act against defendants. Therefore, plaint is not liable to be rejected under order 7 Rule 11(d) of C.P.C. against defendants. With this reason, I decided point No.1 in the negative. In the result, I proceed to pass following order.

**ORDER**

The application/objection raised by defendants is rejected.

Place :-Washim.

Date:- 01.10.2022

(R.B.Sorkar)  
2<sup>nd</sup> Jt. Civil Judge Jr.Dn.,  
Washim.

**C e r t i f i c a t e**

I affirm that the contents of this P.D.F file Judgment/Order are same word to word, as per the original order.

Court Name	:-	Smt R.B.Sorekar, 2 <sup>nd</sup> Jt.C.J.J.D & J.M.F.C,Washim
Date	:-	01.10.2022
Order signed by the presiding officer on	:-	07.10.2022
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