



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

998 WRIT PETITION NO. 3780 OF 2017

SUMANBAI WAMANRAO PATIL THROUGH POWER OF ATTORNEY
WAMANRAO YESHWANTRAO PATIL AND OTHERS
VERSUS
VASANT SHRIPATI KUMTHE AND OTHERS

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Ms. M. S. Mhase h/f. M/s. Lex Aquila, Advocate for the Petitioners.
Mr. M. A. Kulkarni, Advocate for Respondent No.1.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 18th APRIL, 2026

P.C.:-

1. Heard learned Advocates for the respective parties.
2. By the present petition, the Petitioners are aggrieved by the order dated 22.06.2016 passed below Exhibit-50 by the learned Joint Civil Judge, Senior Division, Nilanga in R.C.S. No. 520 of 2012, whereby the application filed by the Petitioners below Exhibit-50 seeking recasting of the following issue came to be rejected:-

“Does Defendant prove Nivarti Ekanth Kumthe was protected tenant under Hyderabad Tenancy Act in respect of suit property ?

Does Defendant prove they are entitled remain in possession on the suit property?

Does defendant prove suit property belongs to the Government of Maharashtra and decree in R.C.S. No.316/93 is illegal and not executable?”

3. Ms. M. S. Mhase, learned Advocate for the Petitioners,



invited my attention to the plaint, particularly paragraph No. 2, wherein it is specifically stated that the issue regarding occupancy rights in respect of Survey No. 51 was adjudicated up to the High Court in favour of Amratrao Deshmukh, and accordingly, he became the absolute owner of the land admeasuring 15 Acres and 41 Gunthas. By referring to the written statement, she further submitted, that the Defendants have raised a specific contention disputing the ownership and possession of the Plaintiffs and their predecessors. According to the Defendants, the suit land was allotted to Nivrutti Eknath Kumthe under the provisions of the Act, and a certificate was issued by the concerned Tahsildar recognizing him as a protected tenant. It is further contended that no ownership certificate exists in favour of Madhavrao Deshmukh in respect of the tenancy, nor have any tenancy rights been declared by the State Government of Maharashtra in his favour.

4. In view of these specific pleadings in the written statement, learned counsel submitted that it was necessary for the Petitioners/Plaintiffs to seek recasting of issues so as to include an issue relating to tenancy. However, the learned Trial Court rejected the said application.

5. Per contra, Ms. M. A. Kulkarni, learned Advocate for Respondent No. 1, submitted that the suit filed by the Petitioners is one for removal of encroachment, and no tenancy issue arises therein. She



submitted that the only question to be determined is whether the Defendants have encroached upon the suit property. According to her, no tenancy issue was either raised or required to be adjudicated before the Trial Court, and therefore, the learned Trial Court has rightly rejected the application for recasting of issues.

6. Having heard the learned Advocates for the respective parties and upon perusal of the documents placed on record, including the plaint, it is evident that the Plaintiffs have filed the suit for removal of encroachment. In the plaint itself, it is specifically pleaded that the issue of tenancy had already been adjudicated up to the High Court in favour of Amratrao Deshmukh, who is the predecessor-in-title of the Petitioners.

7. Considering the pleadings of the parties, it is clear that no tenancy issue arises from the plaint. The Defendants alone have attempted to raise a contention regarding their possession based on alleged occupancy rights. However, once the Plaintiffs have asserted that the tenancy issue has already been finally decided in favour of their predecessor, and considering that the suit is limited to removal of encroachment, I find that no independent tenancy issue arises for determination before the Trial Court.

8. In that view of the matter, I am of the opinion that the



learned Trial Court has not committed any error in rejecting the application for recasting of issues.

9. In view of the above, the present petition stands dismissed.

No order as to costs.

10. Learned Advocate for the Petitioners submits that the suit is of the year 2012 and that this Court, by its impugned order dated 03.07.2017, had stayed further proceedings of the suit. In view thereof, the Trial Court is directed to proceed with the matter and decide the same in accordance with law, as expeditiously as possible, preferably within a period of one year from today.

(SIDDHESHWAR S. THOMBRE, J.)