

(1982) 06 BOM CK 0003

In the Bombay High Court

Case No : C. Revision Application No. 79A of 1982

Shrawan Bagaji Nadre and others

APPELLANT

Vs

Arun Manikrao Kadam

RESPONDENT

Date of Decision : 24-06-1982

Acts Referred:

Citation : (1982) MhLj 777

Hon'ble Judges : D.B. Deshpande, J

Bench : Single Bench

Advocate : V.K. Deshpande, for the Appellant; S.G. Deshmukh with C.G. Solshe and Vijay Sakolkar, for the Respondent

Final Decision : Allowed

Judgement

D.B. Deshpande, J.—The revision petitioners before this Court are original defendants and respondent is the original plaintiff. The suit relates to two lands, Survey Nos. 604/B and 604/C situated at village Girgaon, Taluka Basmath, District Parbhani. The petitioners are admittedly the owners of these lands. The respondent-plaintiff claimed that he was a tenant of petitioners in respect of these lands and he filed regular Civil Suit No. 128 of 1981 in the trial Court for perpetual injunction against the defendants contending that they are obstructing his possession. In this suit, he gave an application for temporary injunction. The application was resisted by the petitioners and after considering the material before him, the learned trial Judge dismissed the application for temporary injunction.

2. The present respondent preferred Miscellaneous Civil Appeal No. 97 of 1981 in the District Court at Parbhani and the appeal was heard by the learned District Judge, Parbhani. The learned District Judge disagreed with the trial Court and he held that the plaintiff is entitled to temporary injunction and, therefore, he allowed the appeal and restrained the present petitioners from interfering with the possession of the respondent-plaintiff on certain conditions mentioned by him as below:--

1) The plaintiff will cause to deposit Rs. 3600 being the "Munafa" for the years 1980-81 and 1981-82 before 1st April 1982.

2) That the Munafa at the rate of Rs. 1800 should be deposited on or before Gudi Padwa of each year till the suit is decided.

Feeling aggrieved by this order, the petitioners have filed this revision application.

3. Shri V.K. Deshpande, appearing on behalf of the revision petitioners, contended that the lower appellate Court was wrong in granting temporary injunction to the respondent-plaintiff. He contended that the respondent-plaintiff was claiming the status of a tenant and the tenancy was disputed. According to him, unless the tenancy Court adjudicates upon the tenancy right of the respondent-plaintiff, Civil Court has no jurisdiction to grant any relief including that of temporary injunction. For this purpose, he relied upon the decision of this Court in Pandurang Appa Patil v. Ananda Bhau Ulpe Civil Revision Application No. 42 of 1974 decided on 28-4-1976 [(XXV (1977) TLR 29.], Tulzapurkar J., (as he then was). This ruling therefore, definitely supports the contention raised by Shri Deshpande and it goes to show that the person, who comes to the Civil Court on the ground of his tenancy, can succeed only if tenancy is held in his favour by the tenancy Court. In that ruling, an application was given to the trial Court to refer the issue about tenancy to the tenancy Court and the Civil Court rejected that application and hence the matter went to the High Court. As against this, Shri S.G. Deshmukh, appearing for the respondent, relied upon another unreported decision of this Court in Hirkanbai Vishwanath Sontakke v. Digamber Govindrao Pande & Ors. Civil Revision Application No. 5-A of 1982 decided on 23rd February 1982 by Kanade J. sitting at Aurangabad. According to Shri Deshmukh, there is a conflict between these two decisions, and, therefore, the matter deserves to be referred to a larger Bench. On account of this submission, I went through both these rulings carefully and I find that there is no conflict whatsoever in these two rulings. Kanade J., also accepted the position that in such cases references have got to be made to the tenancy Court about the tenancy rights. It appears that Shri Deshmukh wants to place reliance upon the following observations of Kanade J., in paragraph 5 of the judgment in this case:--

...It is true that a Civil Court will have a jurisdiction to determine and record the finding as to the prima facie evidence of title at the stage of granting an injunction....

These are only general observations and there can be no dispute whatsoever about these observations in this ruling. Kanade J., has nowhere laid down that even in the absence of a finding by the tenancy Court, the Civil Court has jurisdiction to grant temporary injunction. In the particular facts and circumstances of this case, a request was made before Kanade J., that the parties were applying for the appointment of receiver and, that is why, Kanade J., thought it fit to send this application for appointment of receiver to the trial Court and Kanade J., passed the following order:--

...In the meanwhile, the order of status quo ante passed by this Court shall be operative till the disposal of the application for appointment of the receiver.

It will, therefore, be seen that it is nowhere laid down by Kanade J., that even in the absence of a finding of tenancy by the tenancy Court, Civil Court is entitled to grant relief of temporary injunction and hence there is no conflict whatsoever with the decision of Tulzapurkar J. on the particular point and, therefore, unless, the plaintiff's status as a tenant is adjudicated upon by the tenancy Court, Civil Court has no right to grant temporary injunction and, therefore, the order of the Civil Court-deserves to be set aside.

4. In the result, the revision application is allowed. The order granting the temporary injunction by the learned District Judge, Parbhani, is hereby set aside and the suit is remanded to the trial Court with a direction that the trial Court should refer the tenancy issue of the plaintiff to the tenancy Court and if the issue is answered in the affirmative, then he should proceed to decide the question of temporary injunction. In view of the peculiar circumstances of the case, there will be no order as to costs although the rule is made absolute.