

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6556 OF 2014

Shri Nagnath Dadarao
Narwade (Nalwade) and others

.. Petitioners

Vs.

Madhukar Mahadev Kalyani (Deceased)
Through L.R's

1. Srimati Prabhavati Madhukar Kalyani and others .. Respondents

Mr.Pradeep S.Gole, Advocate for the Petitioners.

Mr.A.M.Kulkarni, Advocate for Respondents No. 1 to 3, 5, 9 & 10.

CORAM : R.G.KETKAR, J.

DATE : 23rd JULY, 2015

P.C. :

. Heard Mr.Pradeep S.Gole, learned Counsel for the petitioners and Mr.A.M.Kulkarni, learned Counsel for the respondents No. 1 to 3, 5, 9 & 10 at length.

2. By this Petition under Article 227 of the Constitution of India, original defendants have challenged the judgment and order dated 09/12/2013 passed by the learned Joint Civil Judge, Junior Division, Barshi on preliminary issue framed in Regular Civil Suit No. 1098 of 2012. By that order, the learned trial Judge held that Civil Court has jurisdiction to entertain and try the Suit.

3. In support of this Petition, Mr.Gole strenuously contended that though the plaintiff has sought relief of measurement

of Gat Nos. 622 to 624 by Deputy Superintendent of Land Records Barshi and for fixation of boundaries in pith and substance, the plaintiff is challenging the consolidation scheme as also the orders passed by the authorities under the provision of the Bombay Prevention of the Fragmentation and Consolidation of Holding Act, 1947 (for short Act). In view of Section 36A(i) of the Act, no Civil Court or Mamlatdar's Court shall have jurisdiction to settle, decide or deal with any question which is by or under the Act required to be settled, decided or dealt with by the State Government or any officer or authority. Sub-section (2) of Section 36 lays down that no order of the State Government or any such officer or authority under the Act shall be questioned in any Civil, Criminal or Mamlatdar's Court.

4. He submitted that in paragraph 8, plaintiff asserted that during the consolidation proceedings, Gat Nos. 622 is formed from original survey Nos. 192/2 + 195/1 + 196/2. The plaintiff has annexed the map of these survey numbers along with the plaint. It is further contended that the land allotted to the plaintiff i.e. Gat No. 622 is not allotted as per the map of original survey number and that area of 52R is not included in Gat 622. In other words, this averment clearly show that plaintiff is challenging the consolidation scheme as also formation of Gat No. 622 under consolidation scheme. He therefore submitted that in view of Section 36A of the Act, Civil Court has no jurisdiction to entertain and try the Suit.

5. On the other hand, Mr.Kulkarni supported the impugned order. He submitted that in paragraph 5, the learned trial Judge has specifically recorded that averments in the plaint do not disclose that plaintiff is challenging the consolidation scheme. There is no specific pleadings that plaintiff is trying to challenge the order of consolidation scheme. It, therefore, cannot be said that plaintiffs have challenged the orders of the consolidation scheme. Mere reference to consolidation scheme does not mean that plaintiff has challenged the order. The learned trial Judge has also considered the decision of this Court in the case of *Antonio Fillpe Vaz Vs. Comunidade of Margao*, **1999(1) Bom.C.R.537** as also decision of the Apex Court in the case of *E.Achuthan Naiar Vs.P.Narayan Nair*, **AIR 1987 Supreme Court 2137** held that suit for demarcating boundaries of the properties is maintainable.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 5 of the impugned order, the learned trial Judge has specifically held that plaintiff has not challenged the consolidation scheme as also the orders passed under the Act. I have also perused the prayer clause (a) of the Suit. By prayer clause (a), the plaintiff has prayed for measurement of Gat Nos. 622 to 624 and for fixation of the boundaries. In view of the decision of this Court in the case of **Antonio Fillpe Vaz** (*supra*) as

also decision of the Apex Court in the case of **E.Achuthan Naiar** (*supra*), the suit for demarcating boundaries of the properties is maintainable.

7. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. All the contentions of the parties on merits are expressly kept open.

(R. G. KETKAR, J.)