

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1866 OF 2015

Vasant Bhagwan Kale and Ors. ... Petitioners
Vs.
Sushila Dhondiba Taware and Ors. ... Respondents

Ms Savita A. Prabhune for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 9TH JUNE, 2015

P.C. :

Heard Ms Prabhune, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners - original plaintiffs have challenged the order dated 08.12.2014 passed by the 4th Joint Civil Judge Junior Division and Judicial Magistrate First Class, Baramati below exhibit-106 in Regular Civil Suit No.307 of 1995. By that order, the learned trial Judge allowed the application for production of documents and documents were allowed to be filed on record.

3. In support of this Petition, Ms Prabhune reiterated the submissions that were advanced before the trial Court. She submitted that the City Civil Court cannot sit in appeal or in revision against the orders passed by the Revenue Authorities. Civil Court has no jurisdiction to consider the orders passed in the consolidation proceedings. Defendants are trying to prolong the Suit, more so when the Suit is instituted in the year 1995. The documents sought to be produced by the defendants are also irrelevant and that it will amount to fresh trial de novo. For all these reasons, she submitted that the Petition requires consideration.

4. I have considered the submissions advanced by Ms Prabhune. I have also perused the material on record. The learned trial Judge, while passing the impugned order, was cautious of the fact that the Civil Court cannot decide the validity or otherwise of the orders passed in consolidation proceedings. The learned trial Judge also made it clear that it is not sitting in appeal or revision over the orders passed by the concerned Revenue Authority. In paragraph 3, the learned trial Judge observed that merely by producing these documents, it cannot be said that this Court is sitting in appeal or revision so as to make any alteration or reversal of the orders. In paragraph 4, the learned trial Judge observed that for better understanding of the controversy between the parties, if the documents are produced, both the parties will get equal opportunity. Moreover, plaintiffs will also get an opportunity to cross-examine the witness and no prejudice will be caused to the plaintiffs.

5. In my opinion, the impugned order is purely an interlocutory order, and therefore, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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