

pingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 142 OF 2015

Parvatibai Rajaram Parkale and others ... Applicants
Vs.
Shri Bhima Shivram Devkar and others ... Respondents

Ms.Savita Prabhune, Advocate for Petitioners.
Mr.S.S.Kanetkar, Advocate for Respondents No.1 to 4.

CORAM : R.G.KETKAR, J.
DATE : 14th DECEMBER, 2015

P.C. :

. Heard Ms.Savita Prabhune, learned Counsel for the applicants and Mr.S.S.Kanetkar, learned Counsel for the respondents No. 1 to 4 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No. 8 to 10 have challenged the judgment and order dated 05/12/2014 passed by the learned Civil Judge, Senior Division, Baramati below Exhibit 31 in Regular Civil Suit No. 55 of 2014. By that order, the learned trial Judge rejected the application made by the defendants No. 8 to 10. The said application was made by the defendants No. 8 to 10 under Order 7 Rule 11 of C.P.C. contending inter alia that Civil Court has no jurisdiction to change, alter or set aside the effects of consolidation scheme implemented under the provisions of the

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'Act').

3. Ms.Prabhune strenuously contended that reading of plaint as a whole will clearly indicate that respondents No. 1 to 4, hereinafter referred to as plaintiffs, have challenged the proceedings under the consolidation scheme implemented under the Act. The plaintiffs have asserted that Jijaba Maruti Khaladkar had exchanged 17 R land from survey No. 170 (1B) in lieu of 17 R from survey No. 169/3 from Babu Shivram Deokar. She submitted that as exchange took place while implementation of consolidation scheme, the jurisdiction of the Civil Court is expressly ousted. She submitted that meaningful reading of plaint will clearly show that apart from the fact that the plaintiffs are claiming relief under the provisions of the Act, it also does not disclose any cause of action.

4. On the other hand, Mr.Kanetkar supported the impugned order. He submitted that while rejecting the application, the learned trial Judge has rightly applied the principles applicable for deciding application under Order 7 Rule 11 of C.P.C. He submitted that after examining the averments in the plaint, the learned trial Judge rightly held that plaintiffs did not assert that exchange took place while implementation of consolidation scheme and that plaintiffs have not challenged the consolidation scheme.

5. I have considered the rival submissions advanced by the

learned Counsel appearing for the parties. I have also perused the material on record. With the assistance of the learned Counsel appearing for the parties, I have also perused paragraph 2 of the plaint, in which the plaintiffs have asserted exchange of 17 R. Perusal of plaint shows that plaintiffs asserted that consolidation scheme was implemented in Village – Nangaon in the year 1970-71 and the survey no. 169/3 was given Gat No. 774. It was given new Gat No. 95 which admeasures 4 hectores and 50 R. The plaintiffs have thereafter given details as to how the succession took place and further how the exchange took place. Perusal of the plaint does not indicate that the exchange between Jijaba and Babu took place during the implementation of the scheme. In view thereof, I do not find that the learned trial Judge has committed any error in holding that the Civil Court has jurisdiction to entertain and try the Suit and not barred by the provisions of the Act. The learned trial Judge has also rightly applied the principles governing while deciding the application under Order 7 Rule 11 of C.P.C.

6. The learned trial Judge also held that the plaint cannot be rejected on the ground that it does not disclose cause of action.

7. In view thereof, no case is made out for invocation of powers under Section 115 of C.P.C. Hence, Application fails and the same is rejected.

(R.G.KETKAR, J.)