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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4431 OF 2015

Shri Ashok Manohar Satam .. Petitioner

Vs.

Khaire Khurd Mashid Gaon
Khaire(Khurd) and another .. Respondents

Mr.Rajendra K.Yadav, Advocate for the Petitioner.

CORAM : R. G. KETKAR, J.
DATE : 01st JULY, 2015

P.C. :

. Heard Mr.Rajendra K.Yadav, learned Counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, original defendant No. 1 has challenged the judgment and order dated 30/03/2015 passed by the learned Civil Judge, Junior Division, Roha below Exhibit 151 in Regular Civil Suit No. 4 of 2000. By that order, the learned trial Judge rejected the application filed by the petitioner under Order 14 Rule 5 of Code of Civil Procedure, 1908 (for short 'C.P.C.').

3. In support of this Petition, Mr.Yadav submitted that in Suit, the plaintiff has prayed for declaration that sale deed dated 30/07/1999 executed by defendant No.2 in favour of defendant No.1 is illegal as also prayed for cancellation of the said sale deed. The

plaintiff has also prayed for declaration that property in dispute is owned by him and that defendants have no right, title and interest therein. He submitted that in paragraph 15 of the written statement, defendant No.1 specifically asserted that though the plaintiff has challenged the sale deed dated 30/07/1999, it was imperative for him to challenge the sale permission granted by Sub-Divisional Officer, Mangaon (for short 'S.D.O.') as also order passed by the Agricultural Land Tribunal, Roha (for short 'A.L.T.'). Though the Civil Court can cancel a registered instrument, still the Civil Court has no jurisdiction to go into validity or otherwise of the sale permission given by S.D.O., Mangaon as also cannot go into validity of order passed by the A.L.T. He submitted that in view of the contention raised in paragraph 15 of the written statement, preliminary issue ought to have been framed and the Suit is liable to be dismissed on that ground. The learned trial Judge, however, committed error in rejecting the application.

4. I have considered the submissions of Mr.Yadav. I have also perused the material on record. As indicated earlier, the plaintiff has challenged the sale deed as also prayed for cancellation of the sale deed. In other words, the plaintiff did not challenge the sale permission given by S.D.O. as also has not challenged the order passed by A.L.T., Roha. The learned trial Judge, in paragraph 4 observed that as the plaintiff has not challenged the permission or

order of the A.L.T., Roha, it is not necessary to frame issue of jurisdiction. It is also not necessary to recast issue No. 5A and frame additional issues as prayed by defendant No.1. After considering the material on record, more particularly, prayers made by plaintiff, I do not find that the learned trial Judge has committed any error in passing the impugned order.

5. Hence, 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.)