

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.734 OF 2016

Popat Kondiba Manchare ... Petitioner
Vs.
Prabhabai Kondiba Manchare (decd) and others ... Respondents

Mr. Uday B. Nighot for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : MARCH 21, 2016

P.C. :

Heard Mr. Nighot, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 16.09.2014 passed by the learned Civil Judge, Junior Division, Ghodegaon below exhibit-103 in Regular Civil Suit No.119 of 2000. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as plaintiff, for calling of the report of the Consolidation Officer in terms of Section 36-B of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'Act') explaining as to how the immovable property was transferred in favour of the respondent No.1, hereinafter referred to as defendant No.1.

3. Plaintiff has instituted Suit for declaration that he is exclusive owner of land bearing Gat No.601 (Old Survey No.359/2) admeasuring 80 Ares, more particularly described in paragraph 1 of the plaint, on the ground that it is his self-acquired property. Plaintiff also prayed for cancellation of the sale deed dated 18.07.2000 executed by defendant No.1 in favour of defendant No.5 and for declaration that the sale deed

is not binding on the plaintiff. Plaintiff has sought perpetual injunction restraining defendants No.2 to 5 from causing obstruction to his possession.

4. During the pendency of the Suit, plaintiff took out application dated 08.02.2007 at exhibit-61 for referring the matter to the Consolidation Officer / D.I.L.R., Pune for deciding and clarifying how the suit property came in the name of defendant and also prayed for interim order directing both the parties to maintain status quo about the possession of the suit property till the receipt of decision of the Consolidation Officer by the Court. Reply dated 15.10.2008 was filed raising ground of bar under Section 36 of the Act. By order dated 09.07.2010, the learned trial Judge directed that the application shall be decided at the time of final hearing and arguments. Plaintiff thereafter filed application exhibit-103 on 01.08.2014 for inviting report of the Consolidation Officer under Section 36-B of the Act as to how the suit land was transferred in favour of the defendant No.1. Defendants filed reply opposing that application. By the impugned order, the learned trial Judge rejected that application. It is against this decision, plaintiff has instituted the present Petition.

5. Mr. Nighot has taken me through the additional compilation containing application exhibit-102 for marking documents as exhibits as also pages 4 to 20 of the additional compilation by which documents are produced on record. He submitted that on one hand, the learned trial Judge ordered hearing of application exhibit-61 at the time of final hearing and arguments and on the other, rejected the application exhibit-103. He submitted that bar under Section 36 of the Act will not apply and the Civil Court has jurisdiction to entertain and try the Suit having regard to the prayers made in the Suit.

6. I have considered the submissions advanced by Mr. Nighot. I have also perused the material on record. While rejecting the application exhibit-103, the learned trial Judge noted that in the plaint, plaintiff came with the case that the consolidation scheme was implemented in respect of the suit property in the year 1980. Name of defendant No.1 is recorded during the course of consolidation proceedings. If at all plaintiff has any grievance about entering the suit property in the name of defendant No.1, as per Section 35 of the Act, he could have made grievance before the authorities under the Act. Though the scheme was implemented in the year 1980, till filing of the Suit in the year 2000, plaintiff did not raise any dispute. In view thereof, the learned trial Judge rejected the application.

7. Section 36-A of the Act reads thus,

“36A. (1) No Civil Court or Mamlatdar's Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority.

(2) No order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdar's Court.”

8. Perusal of the above provision clearly shows that under sub-section (1) of Section 36A, Civil Court shall have no jurisdiction to settle, decide or deal with any question which is by or under the Act is required to be settled, decided or dealt with by the State Government or any officer or authority. Sub-section (2) thereof lays down that no order of the State Government or any such officer or authority made under the Act shall be questioned in any Civil, Criminal or Mamlatdar's Court. Perusal of the prayer made in application exhibit-103 clearly shows that plaintiff wants report of the Consolidation Officer without raising any dispute before the appropriate authorities under the Act. The learned trial Judge was, therefore, justified in rejecting the application.

9. Mr. Nighot invited my attention to communication dated 08.01.2002 addressed by Taluka Inspector of Land Records, Ambegaon to the Superintendent of Land Records, Pune as also communication dated 10.06.2002 made by the Superintendent of Land Records, Pune to Taluka Inspector of Land Records, Ambegaon. These authorities did not take any action on the ground that case is subjudiced in the form of Suit.

10. In view thereof, subject to clarification that notwithstanding pendency of the Suit, the Authorities under the Act will proceed to deal with the proceedings initiated by the plaintiff under the provisions of the Act, no case is made out for interfering with the impugned order. Hence Petition fails and the same is dismissed. Notwithstanding pendency of the Suit, the Authorities under the Act shall proceed to deal with the proceedings initiated by the petitioner on its own merits and in accordance with law. Order accordingly.

(R. G. KETKAR, J.)

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