

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6456 OF 2016

LAXMAN SAHADU BORUDE
VERSUS
BHARAT SAKHARAM GHODAKE AND OTHERS

Advocate for Petitioner : Shri P.R. Katneshwarkar
h/f. Shri V.S. Undre.
Advocate for Respondent No. 1 : Shri A.A. Pimpalwadkar
h/f. A.K. Bhosale.
AGP for Respondent No. 2 to 4 : Shri P.K. Lakhotiya.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 19th December, 2017

PER COURT :

1. By this petition, the petitioner has put forth prayer clause 13
(A) and (B) which read as under :

“A) By issuing the writ of certiorari or any other writ in the like nature, this Hon’ble Court may kindly be pleased to quash and set aside the impugned order below Exh. 1 in RCS No. 124/2016 dated 14.06.2016 passed by the Ld. Civil Judge Senior Division at Shrigonda, Dist. Ahmednagar.

B) By issuing the writ of certiorari or any other writ in the like nature, this Hon’ble Court may kindly be pleased to answer the preliminary issue in favour of the present petitioner/Defendant no. 1 and further be pleased to hold that, the Ld. Trial Court has no jurisdiction to entertain the suit bearing RCS No. 124/2016.”

2. I have considered the strenuous submissions of the learned advocate for the petitioner and the respondents. The petitioner contends that respondent Nos. 2 to 4, in the suit filed by the respondent No. 1/plaintiff, are the Deputy Director of Land Records, Nashik, the District Superintendent of Land Records, Ahmednagar and Deputy Superintendent of Land Records, Shrigonda. They have been unnecessarily arrayed only to ensure that the suit is maintained before the learned Civil Judge, Shrigonda. It is strenuously contended that merely because the orders impugned in the suit have been passed by some of these Revenue authorities that they have been arrayed as defendants only to mount pressure on them and to discourage them from passing any orders against the plaintiff. It is also contended that the dual purpose for arraying defendant Nos. 2 to 4 in the suit is to strike terror in their heart for passing any orders against the plaintiff and to ensure that in future they would not dare to pass any orders against him.

3. Learned counsel for the original plaintiff submits that the suit preferred by him is primarily for seeking injunction simplicitor. Admittedly, there is no relief sought against respondent Nos. 2 to 4. No prayers have been set out in the plaint against them. It is, further, submitted that as these Revenue authorities have passed orders without considering the law applicable, the plaintiff was

advised to implead them as defendant.

4. The contention of the petitioner that the Revenue authorities have been arrayed in order to maintain the suit before the Civil Judge, Senior Division is countered by submitting that the Court of Civil Judge, Senior Division is also available at Shrigonda. If the Revenue authorities are not arrayed as defendants, the suit will be maintained before the learned Civil Judge, Junior Division at Shrigonda. As such, there was no ulterior motive in the mind of plaintiff to array the Revenue authorities to add as defendants.

5. The learned AGP, appearing for the Revenue authorities submits that they have moved an application before the trial Court praying for their deletion from the proceeding. There is no reason to add them as defendants. In the event, they have passed erroneous orders, the superior authorities or the Court of law as the case may be, would be competent to consider the merits of every orders. Arraying Revenue authorities as defendants would unnecessarily demoralize them, since the rigors of litigation would affect them in performing their regular day to day duties.

6. In the light of the submissions of the learned advocates, I have gone through the petition paper book. Neither is the plaintiff

challenging the consolidation scheme framed under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, nor does the plaintiff desires to introduce the said cause of action. The issue of bar of Section 36 (A) would, therefore, not come into the picture.

7. I find from the plaint and the pleadings of the party that besides the averments in the plaint that the Revenue authorities have failed to apply their mind, while passing orders and have illegally carried out the measurement of gut Nos. 1497 and 1498. There is no specific prayer put forth in the plaint against any of these Revenue authorities. It is only that the orders have been criticized in the plaint and while setting forthwith the said criticism, the plaintiff appears to have arrayed them as defendants under an inappropriate advice.

8. Considering the above, the learned advocate for the plaintiff submits that the plaintiff can delete defendant Nos. 2 to 4. In the light of the said statement, the plaintiff would be at liberty to delete defendant Nos. 2 to 4 from R.C.S. No. 124/2016 on/or before 12th January, 2018. Application exhibit 22 filed by the petitioner herein and application exhibit 30 filed by defendant Nos. 2 to 4 seeking their deletion, are rendered infructuous and stand disposed of.

9. Considering the above, this petition is allowed. The Revenue authorities who are defendant Nos. 2 to 4 shall stand deleted in R.C.S. No. 124/2016. It is jointly submitted by the learned advocates that as a necessary consequence of the above directions of this Court, R.C.S. No. 124/2016, would stand transferred to the learned Civil Judge, Junior Division at Shrigonda, considering the jurisdiction vested in the Court by law. As such, after the deletion of respondent Nos. 2 to 4, the learned Civil Judge, Senior Division shall transfer the proceeding to the learned Civil Judge, Junior Division, Shrigonda, where the matter would be re-registered.

10. Learned advocates for the litigating sides submit that they would appear before the learned Civil Judge, Junior Division, Shrigonda, on 23rd January, 2018 and formal notices in the matter need not be issued by the learned Civil Judge, Junior Division, Shrigonda.

(RAVINDRA V. GHUGE, J.)