

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 255 OF 2014***

Shri Kanhu Shankar Phadtare &Ors. ...Applicants
Versus
Shri Dyanoba Gopinath Phadtare & Ors. ...Respondents

Mr.J.S.Kini i/b. Mr. Suresh Dubey for the applicants.
Mr.Shriram S.Kulkarni, for the respondent Nos. 1 to 4.

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE :28th November, 2017.***

P.C. :

1. Heard. Rule. Rule made returnable forthwith with consent of the parties.
2. The applicants herein impugn the order dated 18.7.2013 passed by the Civil Judge, J.D., Saswad in Regular Civil Suit No.339 of 2012. The applicants are the original defendant Nos. 1, 2 and 3. The respondents herein have filed Civil Suit seeking perpetual injunction. It is prayed that the defendant No.1 or his agent shall not create third party interest in respect of land Gat No.322 admeasuring 2 hectares and 91 Ares situated within the limits of Mouje Bopgaon Taluka Purandhar. It was

contended by the plaintiffs that he had raised objections to the errors that were committed in the Consolidation Proceedings. He had given details in respect of the corrections of the consolidation entries. It was specifically contended that the lands standing in the name of Shripati Maruti Phadtare bearing Survey No.241/2 and 241/1 were consolidated and renumbered as Gat No.322. It was also specifically contended that land in the possession of the father of the defendant bearing Survey No.241/2B and 234/2 was renumbered as Gat Nos. 323 and 314. Another contention was that due to errors in the Consolidation Proceedings, Gat Nos. 322, 323 and 314 were shown in the name of father of the defendant i.e. Shankar Maruti Phadtare. The said errors were challenged before the Revenue Authorities. There were findings recorded by the Revenue Authorities. That the plaintiff had succeeded before the District Inspector of Land Records (D.I.L.R. for short). The same was challenged by the defendants before the Minister and the Minister had granted stay to the said order. The plaintiff had also filed an application under Order XXXIX Rules 1 and 2. Notices were issued to the defendants on 11.7.2012. On 5.7.2013, the defendant Nos. 1 to 3 had filed an application under Order VII Rule 11 and had prayed that the suit be dismissed as the plaintiff has made an attempt to challenge the Revenue

records and that it is specifically barred by law. It was also contended that there was no cause of action to file the suit under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short, the said Act) and therefore the suit be dismissed in limine. That the plaintiff had filed his reply to the same.

3. Section 36A & 36B of the said Act reads as under :-s

“SECTION 36A: BAR OF JURISDICTION

(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]

SECTION 36B: SUITS INVOLVING ISSUES REQUIRED TO BE DECIDED UNDER THIS ACT

(1) If any suit instituted in any Civil Court or Mamlatdar's Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the 'competent authority') the Civil Court or Mamlatdar's Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court or Mamlatdar's Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court or Mamlatdar's Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.”

4. It was the contention of the defendants that the plaintiff has

prima facie not even established his title to the suit property and, therefore, the prayers in the suit are not maintainable. It is pertinent to note that in para 6 of the said application, it was specifically contended that the plaintiff had fraudulently obtained title in the Revenue records and had deprived the defendant of his rights and, therefore, the plaintiff has caused irreparable loss to the defendants. It was also contended that the defendant Nos. 7 to 14 are in possession of the suit property and, therefore, there is no cause of action to institute the suit. It is also contended in para 11 that the plaintiff had played fraud upon the Revenue Authorities and had got the name inserted into the 7 x 12 extract and the order passed by the District Inspector of Land Records had caused great prejudice to the defendants as they have been deprived of their legal rights. It was also contended that the plaintiff has paid deficit Court fee stamp while instituting the suit. The learned Court by an order dated 18.7.2013 was pleased to reject the said application. The learned Court has observed that the plaintiff has not challenged any order passed by the D.I.L.R. but has only contended that the plaintiff has right to the suit property. It is also held that the D.I.L.R has passed an order in favour of the plaintiff and the plaintiff is only seeking a declaration that there are errors in the Consolidation Scheme. It is also held

that the plaintiff has not prayed for any correction in the errors in the Consolidation Scheme.

5. The learned counsel for the applicants submits that in fact, a plain reading of the plaint would show that there was no cause of action to file the said suit. That at the time of institution of the suit itself, the Minister had stayed the order passed by the D.I.L.R.

6. The learned counsel for the respondents submits that the applicants herein had challenged the order passed by the D.I.L.R. by filing a revision on 13.2.2012. The suit was instituted on 11.7.2012 and the interim stay was granted by the Minister on 21.2.2013. It is the contention of the learned counsel for the respondents that in view of these facts it cannot be said that the plaintiff had challenged the Records of Rights proceedings and was not seeking any correction to the same. In any case, the order passed by the D.I.L.R. was in favour of the plaintiff at least at the time of institution of the suit.

7. At this stage, upon perusing the facts of the case and the records, it cannot be said that the plaintiff had no cause of action as on the date of institution of the suit. The contentions raised in the plaint under Order VII Rule 11 are self-destructive. It is admitted by the defendants that

the plaintiff has diligently obtained title which is reflected in the 7 x 12 extracts. The learned Court has rightly observed that it cannot be said that the Court has no jurisdiction to try the said suit which is for injunction. Hence, the findings recorded by the learned Judge do not warrant any interference.

8. The Application being sans merits stands dismissed. Rule is discharged.

9. It is made clear that while deciding the suit, the learned Court shall not be influenced by the observations made hereinabove as they are restricted to the impugned order.

(SMT. SADHANA S.JADHAV, J.)