

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9913 OF 2013

Tanaji Jyoti Jagdale & Ors. Petitioners
Vs.
Manik Balu Jagdale Respondent

Mr. G.C. Sawant for the Petitioners.
Mr. Prabhanjan Gujar for the Respondent.

Coram : SMT. SADHANA S. JADHAV, J.
Date : 13th November, 2017

P.C.:

1 Heard respective counsel. Rule. Rule made returnable forthwith with the consent of parties.

2 The petitioner herein happens to be the original defendant no.1 in Regular Civil Suit No. 82 of 2012. The suit was filed for permanent injunction. An application below Exhibit 5 was allowed and then the present petitioner had approached the District Court by filing Miscellaneous Civil Appeal No.17 of 2012. It was demonstrated before both the Courts that there is an error in the

consolidation scheme and that is the root cause of the dispute. It is the contention of the present petitioner that the original survey No. 80 was to be divided into three parts and that it was the father of the plaintiff, who had fraudulently divided it into four parts and allotted it to four different shareholders. It is also submitted that the record, which was prior to the consolidation scheme was implemented before the consolidation scheme had taken effect. It was further contention of the petitioner that there is equal partition while allotting 8A, 36R land to each shareholder that is precisely the issue in dispute. The learned appellate Court has considered the order passed by the trial Court. It is the contention of the petitioner even at this stage that the consolidation scheme in respect of Gat Nos. 341 and 342 is not yet corrected. The appellate Court had refused to exercise the discretion in favour of the appellant and had rejected the Miscellaneous Civil Appeal.

3 This Court is of the opinion that any decision rendered under Exhibit 5 in the facts and circumstances of the case would amount to final disposal of the suit and therefore this Court is not

inclined to set aside the order passed by the appellate Court. Upon instructions, it is submitted by the learned counsel for the respondent that the suit is posted for framing of issues. The contention of the petitioner would be considered while framing issue and specific issue will have to be framed to that effect and the defendant would be allowed to adduce the evidence to that effect and there is patent error in the consolidation scheme. With these directions, the petition is disposed of.

4 It is made clear that this Court has not expressed any opinion on the merits of the matter. All contentions are kept open. However, the trial Court is directed to frame an issue as to whether there is an error in the consolidation scheme and the petitioner i.e. defendant no. 1 is permitted to adduce evidence to that effect. It is also submitted by the learned counsel for the respondent that the revision in respect of the revenue proceedings as far as consolidation scheme is concerned is pending before the Hon'ble Minister.

5 In view of the above, petition is dismissed. Rule is discharged.

(*SMT. SADHANA S. JADHAV*, J.)