

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

WRIT PETITION NO.11189 OF 2014

Mr. Karbhari Rama Dudhate

...Petitioner

vs.

Mr. Namdeo Dada Dudhate and Ors

...Respondents

Mr. Sanjeev Sawant a/w Mr. B.K. Barve, Mr. Sandeep Barve, Ms. Sheetal Tanpure, Mr. Santosh Wagh and Mr. Preshit Bagul i/b B. K. Barve & Co. for the Petitioner.

Mr. Kuldeep Nikam for Respondent Nos.1 to 4.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 29th November, 2017

P.C.:

. Rule. Rule is made returnable forthwith with the consent of the parties.

2. The Petitioner herein happens to be the Plaintiff in Regular Civil Suit No.167/2009 pending before the learned 2nd Joint Civil Judge, Junior Division, Sinnar. At the stage of framing of issues the Plaintiff had filed an application to refer Issue No.2 to the Competent Authority. The Issue No.2 reads as follows:

“Whether the Plaintiff proves that at the time of implementation of consolidated Scheme, the name of defendant No.1 is wrongly entered in 7/12 Extract of the Suit property.”

3. The learned Judge by order dated 24/6/2013 was pleased to reject the said application. Hence, the present writ petition.

4. It is pertinent to note that the Plaintiff had contended in the plaint itself that in the year 1974-1975 there was a consolidation Scheme and by mistake the name of Defendant No.1 was wrongly recorded as the

owner of the suit property bearing Gut No.452/2A in the 7/12 extract. Subsequently, it was renumbered as Gat 106. It is informed that the learned court has framed the said issues.

5. Learned counsel for the Petitioner submits that in order to decide Issue No.2 it would be necessary to refer Issue No.2 to the Competent Authority that is to the Taluka Inspector of Land Records/ District Inspector of Land Records.

6. Learned counsel for the Respondent vehemently submits that even according to the Plaintiff the said error was committed in the year 1974-1975 and the Plaintiff has maintained silence till institution of the suit on 5/8/2009. Learned counsel for the Respondent further submits that it was incumbent upon the Plaintiff to get the correction in the record of rights. It is then submitted that the suit is for possession and mesne profits and therefore correction of record of rights is not an issue before the learned Civil Judge.

7. In any case, the Defendant can not take advantage of the silence of the plaintiff for a prolonged period. The defendant had not objected to framing of Issue No.2. It would not be possible for the Court also to decide the apportionment in view of the consolidation Act. It is further pertinent to note that the said application is rejected only because the plaintiff was not diligent and has not prosecuted the subject matter for more than a decade. The learned Judge has committed an error by holding that Issue Nos.2 and 7 have been framed but they are not substantial issues because even the Plaintiff failed to prove the said issues. In fact every issue that is framed needs to be answered by the learned court in accordance with law.

8. In view of this, order dated 24/6/2015 deserves to be quashed

and set aside. Petition is allowed with a direction that learned Civil Judge seized with Regular Civil Suit No.167/2009 shall refer Issue No.2 to the Competent Authority within 6 weeks from the date of receipt of this order. Petition is allowed in the above terms. Rule is made absolute. The order is restricted to the application filed below Exh.15 and the order passed therein. The learned Court shall not be influenced by the observations made herein above while deciding the other issues in the matter. It is further made clear that the said order dated 24/6/2013 has been quashed and set aside in order to enable the learned Civil Judge to adjudicate Issue No.2.

(SMT. SADHANA S. JADHAV, J.)