

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1116 OF 2018

NANASAHEB SUBHASH PATIL
VERSUS
SHARAD SHIVAJI DESHMUKH AND OTHERS

Advocate for Petitioner : Mr. K.K. Kulkarni.
Advocate for Respondent Nos. 1 & 2 : Mr. N.J. Patil.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 13th March, 2018

PER COURT :

1. The petitioner/original respondent No. 1 is aggrieved by the order dated 31/10/2017, passed by the Trial Court in R.C.S. No. 270/2012. Application Exhibit 71, praying for issuance of summons to the Deputy Director of Land Records for producing original documents with regard to the consolidation scheme, has been rejected for two reasons. Firstly, that the recording of the evidence in the matter has progressed and secondly, the consolidation scheme cannot be challenged before the Trial Court.

2. I have heard the learned advocates for the respective sides. The respondent Nos. 1 and 2 (son and mother) have vehemently opposed this petition and pray that this petition be dismissed with costs.

Respondent no. 3 is a formal party.

3. The petitioner who is defendant No. 1 in the pending suit, is facing a challenge, by which, the plaintiffs have claimed recovery of possession of the area of land which is alleged to have been encroached upon. As the matter progressed, the said defendant realized that he has been given the possession and the title of the disputed portion of the suit land in view of the consolidation scheme of 1978. The order of finalizing the consolidation scheme would indicate that the said defendant possess the land which is said to be encroached upon by him as per the plaintiff.

4. Upon gathering this knowledge, he moved application Exhibit 71 praying for issuance of summons to the Deputy Director of Land Records at Aurangabad. The Trial Court has rejected the said application on the ground that it was not a forum before whom the consolidation scheme can be questioned. It is undisputed that this defendant was not questioning the consolidation scheme. He only desires the production of the relevant record which is in the custody of the Deputy Director of Land Records, by which, he could

establish as to how he got the possession of the said land.

5. In my view, the Trial Court should have taken a pragmatic approach in the matter. The petitioner was never challenging the consolidation scheme. This petition, is therefore, allowed. The impugned order dated 31/10/2017, is quashed and set aside. Application Exhibit 71 is allowed.

(RAVINDRA V. GHUGE, J.)

S.P.C.