

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

WRIT PETITION NO. 5330 OF 2003

1. Shri Dnyanoba Sahadu Satav.
Since deceased through his legal heirs-
1A. Smt.Sindhubai Dnyanoba Satav,
1B. Shri Sharad Dnyanoba Satav,
2. Shri Arjun Sahadu Satav,
3. Shri Vithal Sahadu Satav,
4. Shri Maruti Sahadu Satav,
5. Smt.Gaubai Sahadu Satav,
6. Smt.Kasubai Sahadu Satav. ... Petitioners.

V/s.

1. Shri Shivaji Mahadu Satav,
2. Smt.Draupadabai Mahadu Satav (expired),
3. Smt.Kaushalya Ramdas Satav,
4. Kum.Rahul Rmdas Satav,
5. Kum.Poonam Ramdas Satav,
6. Kum.Manisha Ramdas Satav,
7. Parubai Dattu Tapkir,
8. Sou.Rakhama Shankar Ingale,
9. Chandrabhaga Kisan Kakade. ... Respondents.

H.VKode for the petitioners.
None for the respondents.

CORAM : A.S. OKA, J.

DATE : 22nd May 2018.

ORAL JUDGMENT:

Heard the learned counsel appearing for the petitioners who are original defendant Nos.1 to 6 in the suit filed by the first and second

respondents. The respondents Nos.1 and 2 filed a suit for declaration that they are the owners of the suit land along with original defendant Nos.11 to 13 and that they are in possession thereof. A negative declaration was also claimed that defendant Nos.1 to 10 have no right title or interest in the suit land.

2. Initially, written statement was filed by the present petitioners on 22nd January 2003. After amendment of the plaint, an additional written statement was filed by the petitioner (Exh.F to the petition). In the additional written statement, a specific contention was raised that under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short “the said Act of 1947”), it is the only Settlement Commissioner who has the power to vary or modify the final consolidation scheme. It is contended that only after giving an opportunity of being heard to all the concerned that the final consolidation scheme was sanctioned under the provisions of the said Act of 1947. Relying upon various provisions of the said Act of 1947, in the additional written statement, it was contended that the Civil Court has no jurisdiction to entertain the suit.

3. It appears that the present petitioners made an application at Exh.56. The prayer made in the application was to refer the question of title to the suit property to the Settlement Commissioner. In fact, in paragraph-3 of the said application, it is contended that in view of section 36A of the said Act of 1947, the jurisdiction of the Civil Court has been ousted. By the impugned order dated 9th April 2003, the said application was rejected by the learned 8th Joint Civil Judge, Junior Division, Pune.

4. With the assistance of the learned counsel appearing for the petitioners, I have perused the copies of the amended plant, written statement and additional written statement. I have also perused the copies of application at Exh.56, reply filed to the said application and the written submission filed in support of application at Exh.56.

5. The contention of the petitioners is that even in the plaint it is admitted by the respondent Nos.1 and 2 that in the 7/12 Extract, in respect of suit property, the names of the contesting defendants have been wrongly shown pursuant to the consolidation proceedings took place in the year 1973. It is the case of the petitioners that indirectly the respondent Nos.1 and 2 have sought intervention of the Civil Court for setting aside the orders of the Consolidation Officer passed in the year 1973 under the provisions of the said Act of 1947. Therefore, the bar of suit under section 36A of the said Act of 1947 was invoked by the petitioners. Reliance was placed on the provisions of section 21 and 24 of the said Act of 1947. Thus, in short, by additional written statement and even by written submissions filed in support of the application at Exh.56, the petitioners have raised a contention that the jurisdiction of the Civil Court is barred by virtue of the provisions of the said Act of 1947.

6. In the light of the said contention raised by the petitioners, in fact, there was no occasion for the petitioners to apply for referring the matter to the Settlement Commissioner inasmuch as there is no provision in the said Act of 1947 under which such a reference can be made by the Civil Court to the Authorities under the said Act of 1947. Secondly, the basic contention of the petitioners appears to be that the jurisdiction of the Civil Court has been ousted.

7. Therefore, no fault can be found with the impugned order rejecting the prayer made in application at Exh.56 for making a reference to the Settlement Commissioner.

8. From the copy of the re-casted issues (Exh.C to the petition), it appears that notwithstanding the plea raised by the petitioners in the additional written statement in respect of the bar of the Civil Court, a specific issue on the ouster of the jurisdiction of the Civil Court which ought to have been framed has not been framed.

9. Though no interference is called for with the impugned order, I make it clear that it will be open for the petitioners to apply to the trial Court for framing an additional issue regarding the bar of jurisdiction of Civil Court as the said contention has been specifically raised by the petitioners in their additional written statement. It will be also open for the petitioners to apply to the trial Court to treat the issue of jurisdiction as a preliminary issue.

10. Accordingly, the petition is disposed of by passing the following order:

- (i) The impugned order dated 9th April 2003 is confirmed only on the ground that there is no provision under the said Act of 1947 which enables the Civil Court to refer an issue to the decision of the Authorities under the said Act of 1947;

- (ii) It will be open for the petitioners to make an application to the trial Court for framing an additional issue regarding bar of jurisdiction of Civil Court to entertain the suit and for treating the said issue as preliminary issue. If such an application is made, the trial Court shall decide the same in the light of observations made in this judgment and order;
- (iii) Considering the fact that the suit is of the year 1997, the trial Court shall give necessary priority to the disposal of the suit;
- (iv) The suit shall be disposed of within the time frame provided as per the directions issued by this Court on the administrative side to dispose of 20 years old suits;
- (v) Rule is made absolute in the above terms.

JUDGE