

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5942 OF 2019

**PRABHUAPPA RAMLING KORE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Petitioner : Shri R. P. Bhumkar
AGP for Respondent Nos. 1 and 2 : Shri S. P. Tiwari

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 03rd JUNE, 2019.

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PER COURT :

1. The petitioner is aggrieved by the order dated 07/03/2019 passed by the Trial Court, vide which, application Exhibit 119 in Regular Civil Suit No. 120/2005 praying for framing of an additional issue, has been rejected.

2. I have heard the learned Advocate for the petitioner at length and the learned AGP on behalf of respondent Nos. 1 and 2. With their assistance, I have gone through the petition paper book.

3. The issue before the Trial Court is that the suit has been

preferred by the plaintiff seeking a declaration that defendant Nos. 4 and 5 have taken undue advantage of the old age Trivenabai and have got their names mutated with reference to a portion of land when the scheme under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 was introduced. The plaintiffs also seek partition and declaration of a right to a portion of the land on the ground that defendant Nos. 4 and 5 have surreptitiously got their names entered in the revenue records to a portion of land which was held by Trivenabai.

4. The contention of the petitioner is that no proceeding, in which, a decision as regards allotment of a share of any land covered under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, is entertainable. Section 36A would bar a suit before the Trial Court. It is pleaded in the written statement by the petitioner/defendant No. 5 that after the consolidation scheme was introduced in 1990, the land which is alleged to have gone to the share of Trivenabai, was rightly allotted to the petitioner since he is a purchaser of the said land.

5. It is further contended that 7 acres and 8 gunthas out of the total land of 11 acres 10 gunthas was already sold and another portion of the land admeasuring 1 acre 13 gunthas was purchased by the wife of the petitioner. It is further contended that when the consolidation scheme was introduced, subsequently the remaining portion of the land was also purchased by the petitioner. It is, therefore, contended that there was no land in the name of Trivenabai when the scheme was introduced.

6. I find from the impugned order that the Trial Court has noted that it would only have to appreciate as to whether the particular portion of land should have been allotted to Trivenabai and whether defendant Nos. 4 and 5 have taken undue advantage of the old age of Trivenabai and got the land recorded in their names. The Trial Court has also recorded that it would not be going into the legality of the consolidation scheme and as such, an issue as to whether the suit is barred under Section 36A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 is not required to be

framed.

7. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-