

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11397 OF 2019

VILAS BABURAO BANKAR AND OTHERS
VERSUS
SHAIKH MASUD SHAIKH JABBAR AND OTHERS

Mr.M.K.Bhosle, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2019

PER COURT :

1. The petitioners, who are original defendants in RCS No.89/2012, are aggrieved by the impugned order dated 19/08/2019 passed by the Trial Court by which application Exh.83, filed by these petitioners seeking framing of 2 additional issues, has been rejected.

2. I have considered the extensive submissions of the learned Advocate for the petitioners. I have perused the grounds formulated in the memo of the petition and have gone through the petition paper book with his assistance. Reliance is placed on the judgment delivered by the Hon'ble Apex Court in the matter of Shevantabai Maruti Kalhatkar Vs. Ramu Rakhmaji Kalhatkar [1999 AIR SC 2628] and by this Court in the matter of Anant Rama Kankonkar and

others Vs.Confraria DO SSMO SACRAMENTO E.N.SRA.DO ROSARIO
DA IGREJA DECURCA alias CONFRARIA OF CURCA @ CONFRARIA
OF SANTISSIMO OF CURCA @ CONFRARIA OF THE CHURCH OF
CURCA & OTHERS [2008(3) ALL MR 119].

3. Application Exh.83 filed by these petitioners indicates that they pray for the framing of the following 2 issues :-

- 1. Whether the suit has been defected and the bar of jurisdiction u/s 36-A of The Maharashtra Prevention of the Fragmentation and Concilidation of Holding Act and the relevant provisions made there under ?”*
- 2. Whether the suit has been barred by Law of Limitation ?*

The only substantiation in support of the said application is that multiplicity of litigation should be avoided and Section 36-A of the Prevention of Fragmentation and Consolidation of Holdings Act is applicable.

4. The plaintiffs submitted their reply to Exh.83 and stated that they have not challenged any consolidation scheme. There is no dispute raised in the plaint except that the plaintiff has been dispossessed by the defendants from the suit land on 28/04/2010 and since they have been dispossessed and the defendants have

declined to share the income from the agricultural land, that they were constrained to file the suit on 23/03/2016. It is, therefore a pleading of the plaintiffs that they are seeking recovery of possession of suit land within 6 years from the date of dispossession and the limitation for seeking recovery of possession would be 12 years from the date of the dispossession.

5. I find that the petitioners in this petition are repeatedly canvassing that the plaintiffs have challenged the consolidation scheme after about 60 years. I do not find any such pleading in the plaint, in as much as, the Trial Court has also concluded on the basis of the pleadings of the parties that the plaintiffs have not challenged any consolidation scheme or entry pursuant thereto. Exh.83 filed by these petitioners is solely depending upon the bar of jurisdiction as against the Civil Court in entertaining a civil suit in view of Section 36-A. When no challenge is raised falling under the Prevention of Fragmentation and Consolidation of Holdings Act, I do not find that the Trial Court could be faulted for passing the impugned order.

6. In Shevantabai (supra), the Hon'ble Apex Court dealt with a specific issue falling under the Bombay Prevention of Fragmentation

and Consolidation of Holdings Act. In Anant Rama (supra), the issue raised was as to whether the defendants could prove that the suit property was leased by the plaintiff for about 60 years. As there was an existence of lease, this Court permitted framing of an additional issue. In M/s Shraddha Associates and another Vs. St.Patrick's Town Co-operative Housing Society Ltd., and others [2003(1) ALL MR 674], the issue was as to how framing of the issues or re-framing of the issues has to be done by the Court and if any cause of action barred by the Law of Limitation is put forth in the plaint, an issue as regards limitation will have to be framed.

7. Considering the above, as the suit is based on the averment that the plaintiffs were dispossessed on 28/04/2010, which pre-supposes that they were in possession of the suit property there before, none of the cited judgments would assist the petitioner.

8. This petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)