

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION No.33 of 2019

Ramrao S/o Narayanrao Jadhav
age 51 years occupation agriculture
R/o Khanapur Tarfe Zari Taluka and District Parbhani
...Petitioner

VERSUS

1. Narayan S/o Dagdoba Wakle
age 74 years occupation agriculture
R/o Jalapur Taluka and District Parbhani
2. Kausabai W/o Narayanrao Wakle,
age 69 years occupation household and agriculture
R/o as above
3. Laxman S/o Punjaji Tekale (died)
4. Manik S/o Laxman Tekale,
age 49 years occupation Agriculture R/o as above.
5. Sonaji S/o Punjaji Tekale,
age 44 years occupation & R/o as above.
6. Raosaheb S/o Laxman Tekale,
age 39 years occupation & R/o as above.

...Respondents

Mr. P.N. Kalani, Advocate for petitioner

CORAM : SUNIL P. DESHMUKH, J.

DATE : 10th January, 2019

ORDER:

1. Heard learned counsel for the petitioner. Learned counsel for petitioner purports to contend that since the

implementation of the consolidation scheme is denied and the petitioner/defendants having asserted the same, the issue about implementation, which is exclusive subject matter under the Maharashtra Prevention of Fragmentation and Consolidations of Holdings Act, 1947 would not be available for consideration by the civil court having regard to Section 8 and as such, question as to the jurisdiction may arise and accordingly application Exhibit-144 has been moved, however, the same has been rejected. He, therefore, submits that having regard to aforesaid position, the issue was required to be framed and decided by trial court.

2. On the basis of submissions advanced on behalf of the parties, trial court has observed in paragraphs No. 6 & 7 of impugned order, thus,

“6. On perusal of record, it is seen that the suit is for simpliciter injunction. On perusal of pleadings and facts, it is seen that plaintiff did not claimed any relief in respect of consolidation scheme neither he challenged the scheme of consolidation. In such circumstances, there is no need to frame raised issue. Further more, as mentioned in earlier para, vide order on Exh.132, my learned predecessor recasted the issues, there was appropriate stage for filing such application.

7. The plaintiff filed case law, Prabhakar Kushaba Hagwane and others Vs. Yashwant Bhau Hagwane, 1993 (2) Mh.L.J., 1291, in which Hon'ble Bombay High Court held

that on basis of illegal dispossession of property subsequent to acquisition of title under Act, it could not be said that Civil Court had no jurisdiction. I have gone through the judgment, facts of above cited judgment are totally different from present case in hand. Hence, with due respect I say that above judgment is not applicable in present case. It is necessary to mention here that the matter is in the year 2009 i.e. above five years old and there are instructions of the Hon'ble High Court to expedite the old matters. It is also seen on record that sufficient opportunity is given to defendants to raise such type of objection. In such circumstances, it appeared that this application is filed only to prolong the matter. Hence, I hold that present application deserves to be rejected. ”

3. Having regard to aforesaid, it does not appear that the order suffers any infirmity requiring interference under the discretionary powers of this court. The writ petition is, therefore, not entertained and is rejected.

**(SUNIL P. DESHMUKH)
JUDGE.**