IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.143 OF 1991

Shri Sakharam Jivala Bhadange
44 yrs., Occupation: Agriculture,
resident of Circle Pada Barhe,
Taluka: Surgana, District: Nashik ... Appellant
(Original Defendant)

Versus

Shri Rajaram Ramaji Gaikwad
29 yrs., Occupation: Agriculture,
resident of Barhe, Taluka Surgana,
District: Nashik ... Respondent
(Original Plaintiff)

...

Mr. Rahul D. Motkari for the Appellant.
Mr. Sachin Gite for the Respondent No.1.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : JUNE 27, 2019
PRONOUNCED ON: SEPTEMBER 19, 2019

JUDGMENT :

1 On 13th March, 1991, this Court admitted appeal on the following substantial question of law:

> *"(2) It should have been further noted that the plaintiff has not sought declaration, challenging the order dated 17th June, 1978, passed by the Consolidation Officer in supercession of certificate under Section 24 of the Maharashtra*

Prevention of Fragmentation and Consolidation of Holdings Act, 1947 issued in the year 1976"

2 Heard learned counsel for the parties. Perused record. In my view, appeal also gives rise to following substantial question of law, which I have framed in terms of proviso to Section 100(4) of the Code of Civil Procedure, 1908, and accordingly, called upon the parties to address same:

> "*1. Whether certificate of transfer issued under Section 24 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, is certificate of title or evidence of transfer, which has already taken place."*

3 The appellant was Defendant, in the Civil Suit No.3 of 1977, instituted by the respondent in the Court of Civil Judge, Junior Division, Dindori at Nashik wherein he sought possession of Gat No.108 admeasuring 2 Hectares situated at Village: Barhe, Taluka: Surgana (hereinafter called 'Suit Land').

4 Plaintiff's case is; the suit land bears Gat No.108, corresponding Old Survey No.57/1. It was under his cultivation for about 20 years since after his father's death. The Consolidation Scheme, under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (In short '**Said Act**') came to be implemented and has been allotted Suit Gat No.108 in the Village: Barhe in March, 1976. In terms of the provisions of Section 24 of the Said Act, a certificate was also issued in his favour and by notification in the Government Gazette of Maharashtra dated 1st May, 1976, he has been declared as owner of the Block No.108 (Suit Land), admeasuring 2H, corresponding old Survey No.57/1. It appears from the record that under the Scheme, appellant (Original Defendant) was also allotted holding Block Nos.92, 107, 110 at Village: Barhe, Taluka: Surgana District: Nashik. Out of these, block no.107 was previously bearing Survey No.57/2.

5 It is plaintiff's case that though the defendant was not concerned with the suit land (Gat No.108), he forcibly

dispossessed him and thus, after notice, instituted Regular Civil Suit No.3 of 1977 for its possession and compensation.

6 The appellant/defendant, denied the plaintiff's claim and would contend that, while implementing the consolidation scheme, erroneously Survey No.57, came to be re-constituted, comprising of holding block nos.106,107 and 108 and further mistakenly on paper holding block no.108 shown to have been allotted to the plaintiff ; however, it was never allotted to him. However, plaintiff took disadvantage of this mistake committed by the Consolidation Officer and filed false suit. It is his defence that Gat No.108 was never came into being as, inadvisedly Consolidation Officer constituted old survey no.57, consisting of Gat Nos.106, 107, 108 instead Gat Nos.106 and 107. Defendant thus, denied plaintiff's possession over Gat No.108 and factum of dispossession as alleged.

7 It is the defendant's case that soon after implementation of the scheme, he requested the Consolidation Officer No.5 to correct the mistake and

accordingly, vide order dated 17th June, 1978, he corrected the mistake and given effect thereto in the revenue record, village form no.6.

8 The Trial Court thus upon appreciating oral and documentary evidence and particularly, revenue record period prior and post application of consolidation scheme, concluded that the plaintiff was never in possession of the suit Gat Nos.108 either before or after, the implementation of the scheme. The suit was dismissed by the judgment and decree dated 15th July, 1981.

9 Plaintiff, being aggrieved by the judgment and decree of the Trial Court, preferred Regular Civil Appeal No.389 of 1981 in the Court of District Judge, Nashik. The Appellate Court vide judgment and order dated 9th January, 1991 allowed the appeal with cost and set aside the decree passed by the Trial Court.

10 It is against the decree of the Appellate Court, defendant has preferred this appeal.

11 The evidence on record shows that Block No.108

(Suit Land) before application of the scheme, was bearing Survey No.57/1 admeasuring 2 H; and Block No.107, was bearing Survey No.57/2. Certificate- Exhibit 27 shows that block no.108 was allotted to the plaintiff and 107 to the defendant.

12 It is not in dispute that after issuing certificate of transfer, Consolidation Officer entertained the complaint of the defendant and passed an order dated 18th June, 1978. This order has been given effect to vide Mutation Entry 349 (Ex.43)

13 It may be stated that against the order dated 17th June, 1978 passed by the Circle Officer, Appeal No.99 of 1979 was preferred before the Leave Reserve Deputy Collector, Nashik. It was dismissed on 25th November, 1980 confirming the order passed by the Circle Officer. Order passed by the Leave Reserve Deputy Collector was challenged before the Additional Collector and Resident Deputy Collector being RTS/A/171/80; however the Additional Collector dismissed the appeal on 20th April,

1982.

14 In effect corrections made by the Circle Officer in the revenue record at the first instance vide order dated 17th June, 1978 has been confirmed throughout by the Revenue Authorities.

15 Order dated 17th June 1978, to which effect was given M.E. Ex.43, shows that the Land No.57 in all was admeasuring 7.91 Hectares. It shows before application of consolidation scheme, survey no.57 was comprising of; 57/1 (admeasuring 3 H 95 R) and Sakharam Jivala Bhadange (defendant) was in possession thereof; AND 57/2 (admeasuring 3 H 96) was in possession of Nathu Mahadu Bhoye and Sakharam Mahadu Bhoye. However, after implementation of consolidation scheme, Survey No.57 was reconstituted as under:

Gat Number	Area	Occupant (Kabjedar)
108	2 H	Rajaram Raya Gaikwad (Plaintiff)
106	1 H 57 R	Nathu Mahadu Bhoye Sakharam Mahadu Bhoye
107	4 H 34 R	Sakharam Jivala Bhadange (Appellant/defendant)
	7 H 91 R	

Ex.43 also shows that on physical verification (made on 12th April, 1978) Nathu Mahadu Bhoye and Sakharam Mahadu Bhoye were found in possession of 3 H 96R corresponding Gat No.106 AND Sakharam Jivala Bhadange (appellant/defendant) was found in possession of area admeasuring 3.95 R corresponding Gat No.107. Consolidation Officer, thus, certified that area of Gat No.108 has merged in Gat Nos.106 and 107. In view of the position as ascertained and found, name of the Rajaram Raya Gaikwad (Plaintiff) has been deleted from the revenue record.

16 The learned counsel for the appellant/defendant has also brought to my notice a communication dated 6th September, 1992 addressed to him by the Consolidation Officer, which reads as under:

As per Consolidation Scheme				**As per Corrections**		
Sr.No.	Owner's Name	Gat No.	Area	Owner's name	Gat No.	Area

1	Sakharam Jivala Bhadange (Appellant Defendant)	107	4.34	Sakharam Jivala Bhadange	108 +107 A	4.42
2	Nathu Mahadu Bhoye Sakharam Mahadu Bhoye	106	1.57	Nathu Mahadu Bhoye Sakharam Mahadu Bhoye	106 + 107B	3.49
3	Rajaram Raya Gaikwad (Respondent Plaintiff)	108	2.00	-	-	-

17 Thus, the evidence on record has established a fact in issue, that before application of the consolidation scheme, survey no.57 was admeasuring 7.91 H and was comprising of 57/1 and 57/2. It shows 57/1 was in possession and occupation of the Sakharam Jivala Bhadange (Defendant) and 57/2 was in possession of Nathu Mahadu Bhoye and another. In other words, Survey No.57 does not admit possession of the plaintiff before the application of the scheme. However after, consolidation scheme , total area of Survey No.57 has been divided in three Gat Nos. 108,106 and 107 and Gat No.108 has been inadvertently shown to have been allotted to the plaintiff,

Rajaram Raya Gaikwad. But in view of actual survey, Consolidation Officer found it was a mistake and it was set-right. It is also established that before application of the consolidation scheme, plaintiff was neither owner nor was in possession of any part of Survey No.57 in either capacity.

18 Thus, evidence on record, particularly, the orders passed by the Revenue Authorities from time to time has established the fact that before application of the Consolidation Scheme, respondent/plaintiff was not in possession of the suit land (Holding Gat No.108).

19 The learned counsel for the respondent, however, submits that once there is certificate issued under Section 24 of the Said Act, it is conclusive proof of title and on this proposition of law, he has relied upon judgment of this Court in the case of **Prabhakar Kushaba Hagwane v. Yashwant Bhau Hagwane since deceased by LRS. Ganpat Yashwant Hagwane and Ors. 1993 Mh.L.J.1291**. Reliance is placed on paragraph 6 of the said judgment, which reads as under:

> *"6 Section 22 mentions that as soon as the persons entitled to possession of holdings under this Act, are entered into possession of the holdings, the scheme shall be deemed to have come into force. Section 24 mentions that the Consolidation Officer shall grant to the owner to whom a holding has been allotted in pursuance of the scheme, a certificate in the prescribed form duly registered under the Indian Registration Act to the effect that the holding has been transferred to him in pursuance of the scheme. Close scrutiny of Chapter III in general and sections 22 and 24 in particular will indicate in no uncertain terms that the scheme is complete as soon as possession is delivered. Issuance of a transfer certificate is a matter of procedure and is only an evidence of the transfer which has already taken place. Vesting of the title in the consolidation of holdings, thus, does not depend upon the grant of certificate of transfer, or in other words, transfer is not effected on the basis of the transfer certificate. Under the circumstances, conclusion is inevitable that the plaintiff had become the owner of the property even before issuance of a certificate under section 24."*

20 In my view, observations in paragraph 6 are in context of the fact in the given case. In fact, observations in paragraph 6 proceed to say that transfer certificate is matter of procedure and is only evidence of transfer, which has already taken place.

21 In the case in hand, the suit was filed by the respondent for possession. In this case, evidence has established that Plaintiff was never in possession of Survey

No.67 (Gat No.108) at any point of time i.e. before or after the application of the Scheme. Even otherwise, there is no evidence of adjoining landholders, suggesting plaintiff's possession in the suit land. The only evidence on which plaintiff relied upon is certificate issued under Section 24 of the Act. However, Revenue Officers corrected the mistake and set right the revenue record. More so, vesting of title in the consolidation of holdings, does not depend upon grant of certificate of transfer, as held in **Prabhakar v. Yashwant (Supra)**. Documentary evidence on record shows the Consolidation Officer mistakenly shown Gat No.108 was allotted to the respondent/plaintiff, but later officers have corrected the mistake by passing the order after hearing both the sides. This order was confirmed throughout in two successive appeals. Evidence on record in no uncertain terms has established a fact that plaintiff – respondent was never in possession of S.No.57 or any part thereof before or after application of scheme. That such, plaintiff-respondent failed to prove the alleged dispossession from the Gat No. 108.

22 In the case of **Hemdas Premdas Ranbakuda and others v. Surajbai Dhansao Sahu (Smt.) and Ors. 2008(4) Bom. C.R.669**, this Court has held in paragraph 7 as under:

> *7 Even if it is presumed that document is admissible in evidence, the said document issued under Section 24 of the 1947 Act does not have the effect of transferring title to Chudaman. Section 24 of the 1947 Act reads as under:*
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> > *24. Certificate of Transfer; (1) The Consolidation Officer shall grant to every owner to whom a holding has been allotted in pursuance of the scheme of consolidation and to every person to whom a right is allotted under Sub-section (6) of Section 21 a certificate in the prescribed form duly registered under the Indian Registration Act, 1908 to the effect that the holding has been transferred to him in pursuance of the Scheme. (2) Notwithstanding anything contained in any law for the time being in force no stamp or registration fee shall be payable in respect of such certificate.*
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> *Thus a duty is cast upon the Consolidation Officer to issue certificate to every owner to whom holding has been allotted in pursuance of a scheme of Consolidation. The further language clearly shows that the certificate can be issued to a person to whom holding has been transferred in pursuance of the Consolidation scheme. The transfer*

envisaged is on account of adjustment of areas with adjacent owners, so as to prepare a viable and workable agricultural plot of land. Thus certain portion of adjacent landowner may be required to be given to other owners for the purpose of such scheme and therefore only provisions has been made by the legislature to issue a certificate to such owner to whom the adjacent land has been transferred under the scheme with a provision for registration of such certificate under the Indian Registration Act, 1908. There is also a provision under Sub-section (2) which exempts such certificate from payment of stamp duty or registration fee. The Consolidation Officer has not allotted or transferred any land to Chudaman while implementing the Consolidation scheme. Such allotment or transfer is possible only in favour of a person who is already a owner before such scheme is undertaken."

23 Thus, it is to be seen pre-condition for allotment of holding is possible in favour of person, who is already owner and/or adjacent land owner before such scheme is undertaken. As it appears, transfer envisaged is on account of adjustment of area of holding, in terms of the Scheme. In the process of adjustment, adjacent owners may be required to be allotted area of other owners to make the Scheme workable. If such a adjustment is made, certificate of holding is to be issued under the Act. Thus, when

certificate of holding is issued to a person, it presupposes , he was either its owner or adjacent owner. In the case in hand, I have concluded that the plaintiff could not establish any time before the implementation of the Consolidation Scheme, he was in possession of part of Survey No.57 or was adjoining owner thereof.

24 In the result, I hold that certificate under Section 24 of the Act is evidence of transfer. The question is answered accordingly. The question of law framed at the stage of admission of the appeal is no longer needed to be answered.

25 That for the reasons stated, appeal is allowed and the impugned decree passed in Civil Appeal No.389 of 1981, is quashed and set aside. Suit stands dismissed. Appeal is disposed of.

(SANDEEP K. SHINDE, J.)