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

SECOND APPEAL NO. 187 OF 2015

Venubai Vishwanath Gole	..Appellant
vs.	
Government of Maharashtra & ors.	..Respondents

**WITH
WRIT PETITION NO. 6947 OF 2018**

Alka Babanrao Shilimkar & anr.	..Petitioners
vs.	
State of Maharashtra & ors.	..Respondents

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Shri A.B. Tajane for appellant.
Ms. Tanaya Goswami, AGP for respondent Nos. 1 to 3 in SA.
Shri S.D. Rayrikar, AGP for respondent Nos. 1 to 3 in WP.

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CORAM : M.S.KARNIK, J.

DATE : 9th OCTOBER, 2019

P.C. :

Heard learned counsel for the appellant.

2. The appellant in this Appeal challenges the judgment and decree passed by the First Appellate Court dismissing the Appeal filed by the appellant. The appellant is the original plaintiff. The plaintiff claimed to be the owner and in possession

of the various suit properties mentioned in the cause title. It is plaintiff's case that the names of the forefathers of the plaintiff were found in the revenue record of the property till 1954-1955. However, the Government has wrongly prepared the mutation entry No.1149 and thereby deleted the names of forefathers of the plaintiff illegally. It is the case of the plaintiff that in the year 1982 the Government officers have changed the entries in the 7/12 extracts of the suit property in view of the provisions of the Bombay Prevention of the Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "the said Act" for short). Thereafter, against these revenue entries various proceedings were filed before the revenue authorities. The plaintiff however did not succeed. The plaintiff also filed a regular Civil Suit No. 242/1983 for perpetual injunction. The said suit came to be dismissed.

3. It is observed by the Appellate Court that by filing civil suit No. 242 of 1983, the plaintiff has prayed for mandatory perpetual injunction and damages. The First Appellate Court

was of the view that in terms of Order 2 Rule 2 of the Code of Civil Procedure, the plaintiff is now not entitled to seek these reliefs which plaintiff omitted while filing the earlier suit.

4. I see no reason to interfere with this view of the Appellate Court. Concurrent findings of fact are recorded by the Courts below and against the plaintiff. Moreover, the Appellate Court has observed that as per Section 158 of the Maharashtra Land Revenue Code, 1966 it is for the revenue officers to maintain the revenue record of the lands in Maharashtra and that the civil Court has no jurisdiction to direct by way mandatory injunction to the State – defendant not to record names of any one in the revenue record of the suit property.

5. However, my attention is invited by learned counsel for the appellant to two documents dated 16th July 2011 addressed by the Tahsildar to the Superintendent Land Records, Pune and document dated 12th July, 2010 addressed by the Sub-Divisional Officer Bhore and Pune to the Collector, Pune. Learned counsel for the appellant would submit that these documents

were produced before the Appellate Court but the Appellate Court has failed to take into consideration these documents while deciding the Appeal.

6. Against the order deleting the names from the revenue records, the appellant had also filed a representation before the Hon'ble Minister of Revenue in the year 2016. The said representation is rejected by the Hon'ble Minister on 8/3/2018. The order passed by the Hon'ble Minister will reveal that these two documents have not been considered by the Hon'ble Minister while rejecting the representation. The order passed by the Hon'ble Minister on 8/3/2018 is subject matter of challenge in Writ Petition No. 6947 of 2018.

7. Be that as it may, the communication dated 12th July 2010 addressed by the Sub-Divisional Officer, Bhore to the Collector, Pune more particularly the last paragraph therein reveals that there are some mistakes in the matter of consolidation and in this respect the appellant can make representation to the Superintendent of Land Records, Pune

(Consolidation). In this view of the matter, learned counsel for the appellant would submit that as per the own showing of the respondent, as there are some mistakes in the consolidation, the issue will have to be looked into by the Superintendent of Land Records, Pune (Consolidation). He states that he will file a fresh representation to the consolidation officer in terms of the communication dated 12/7/2010. If such a representation is made within a period of 4 weeks from today, the representation be considered in accordance with law.

8. In view of the concurrent findings recorded by the Courts below, the Appeal is dismissed with no order as to costs. Even the Writ Petition is dismissed. It is however made clear that if a representation is made in term of the communication dated 12/7/2010 within 4 weeks from today, the same be considered in accordance with law.

9. The Civil Application is disposed of.

(M.S.KARNIK, J.)