

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

2 WRIT PETITION NO.3850 OF 2007

1. Pandharinath S/o Sakruba Sasemahal
Since deceased through his L.Rs.
- 1-A) Gayabai W/o Pandharinath Sasemahal,
Age : 70 years, Occu. Household,
R/o Salud, Tq. & District Aurangabad.
- 1-B) Gunaji S/o Pandharinath Sasemahal,
Age : 44 years, Occu. Agril.,
R/o Salud, Tq. & District Aurangabad.
- 1-C) Mohan S/o Pandharinath Sasemahal,
Age : 50 years, Occu. Agril.,
R/o Salud, Tq. & District Aurangabad.
- 1-D) Laxmibai W/o Ankushrao Wagh,
Age : 45 years, Occu. Household,
R/o Salud, Tq. & District Aurangabad.
- 1-E) Machindra S/o Pandharinath Sasemahal,
Age : 40 years, Occu. Agril.,
R/o Salud, Tq. & District Aurangabad. ... **Petitioners**

Versus

1. Keshav S/o Asaram Bhalerao
Age : 43 years, Occu. Agril.,
R/o Salud, Tq. & District Aurangabad.
2. Kaduba S/o Rajaram Sasemahal,
deceased through L.Rs.
- 2-A) Janardhan S/o Kaduba Sasemahal,
Age : 48 years, Occu. Agril.,
R/o Salud, Tq. & District Aurangabad.

2-B) Premeshwar s/o Kaduba Sasemahal,
Age : 40 years, Occu. and
R/o as above.

... Respondents.

...
Advocate for Petitioners : Mr. P. F. Patni
Advocate for Respondent No.1 : Mr. A.D.Kasliwal
...

CORAM : V. K. JADHAV, J.
DATE : 02.03.2020

ORAL JUDGMENT :-

1. The petitioner is the original plaintiff. The petitioner had instituted Regular Civil Suit No.555 of 1999 for cancellation of the registered sale deed, executed by defendant No.2 in favour of defendant No.1, on 14.05.1996, with some consequential prayer for insertion of the name of the plaintiff in R.O.R. in respect of the aforesaid land, which is the subject matter of the sale deed. Pending suit, after the evidence of witness No.5 for the plaintiff over, after a gap of seven (7) years, the petitioner-plaintiff had filed an application Exh.129 under Order VI Rule 17 of the Civil Procedure Code for amendment of the plaint. The respondents-defendants have strongly resisted the said application by filing their say. Learned 6th Joint Civil Judge Junior Division, Aurangabad by

order dated 27.04.2007, below Exh.129 in Regular Civil Suit No.555 of 1999, rejected the said application. Hence, this Writ Petition.

2. The learned counsel for the petitioner-plaintiff submits that the land Survey No.21/3 to the extent of 1 Acre 10 Guntha is the ancestral land of the petitioner-plaintiff. During implementation of the consolidation scheme, this particular land Survey No.21/3 was not converted into land Gut No.47, as it has been revealed from the evidence of witness No.5, who is the Taluka Inspector of Land Records at Aurangabad.

3. The learned counsel submits that the petitioner-plaintiff has tried his best to obtain the copies of the consolidation statement on the earlier occasion prior to examination of witness No.5 as his witness before the Court. However, he was informed that the consolidation statement pertaining to the said land has been misplaced. The learned counsel submits that witness No.5 has placed on record the statement of the consolidation. The learned counsel submits that if the ancestral land of the petitioner-plaintiff, bearing Survey No.21/3 to the extent of 50 R. is not included in Gut No.47, then it is

necessary for the plaintiff to carry out the amendment in the plaint. By way of proposed amendment, the petitioner-plaintiff has prayed for the declaration that the land as per the boundaries mentioned in the sale deed is not the part and parcel of land Gut No.47 but it is a land of old Survey No.21/3 of the plaintiff situated at Sellud, Taluka and District Aurangabad and also seeking the amendment about mentioning the old Survey No.21/3 along with the boundaries, to the extent of 50 R., of the land. The learned counsel submits that though there is a delay caused in filing the civil application, it has been caused as witness No.5 for the petitioner-plaintiff has placed on record the consolidation statement. The learned counsel submits that it is apparent on the face of the record that the mistake has been committed during the course of the implementation of the consolidation scheme, however, even though there is a bar on jurisdiction of the Civil Court, the said bar is only restricted to the orders, which are passed by the Consolidation Officers and suit for declaration and injunction is not barred.

4. The learned counsel for the petitioner, placed his

reliance on *Shankar Appa Mali and others Vs. Ananda Mahadeo Mali and others* reported in *2011 (5) Mh.L.J, 727*.

5. The learned counsel for the respondents-defendants submits that witness No.5 for the plaintiff has deposed that in consolidation of Gut No.47, two shares belonging to the plaintiff are consolidated i.e. 11-C from Survey No.18 and 6-B from Survey No.21. He has further made it clear in the cross-examination that the said consolidation scheme was implemented in the village on 23.09.1968 and the share of 11-A from Survey No.18 was given to plaintiff's father Pandharinath towards the consideration of his share 11-C from Survey No.18 and 6-B from Survey No.21 and the gut number given to his land is Gut No.52. He has also stated in his cross-examination that the lands were exchanged and the statements of the parties were recorded including the statement of the Pandharinath. He has further made it clear that in consolidation, survey No.21/3 which was belonging to one Dagadu Trambak was given to one Kacharu and Gut No.43 is formed in respect of the land of Kacharu. The learned counsel submits that even after the examination of this witness was

over, the petitioner-plaintiff has waited for further period of seven (7) years and filed the application Exh.129 with some ulterior motive. The trial Court has rightly rejected the said application. No interference is required. The Writ Petition is liable to be dismissed.

6. I have carefully gone through the contents of the application Exh.129, the say filed by the other side, the pleadings of the parties and the impugned order passed by the Court below Exh.129. Though the learned counsel for the petitioner-plaintiff has tried his best by showing the original record that the land Survey No.21/3 is the ancestral land of the petitioner-plaintiff, however, there is a bar of jurisdiction of the Civil Court in terms of the provisions of Section 36-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The petitioner's own witness No.5, who is the Taluka Inspector of the Land Records, on the strength of the record after implementation of the consolidation scheme in the village, has deposed that the land survey No.21/3 was not belonging to the petitioner-plaintiff and it was belonging to one Dagadu Trambak before the Consolidation and after

consolidation it was given to one Kacharu. It is true that, at this stage, the merits of the proposed amendment are not required to be considered, however, the suit instituted by the petitioner can be based upon the record available after implementation of the consolidation scheme and that is what this Court has held in the case of *Shankar Appa Mali* (supra) relied upon by the learned counsel for the petitioner. Apart from this, there is an inordinate delay in filing the application for which no justifiable reasons are given. It is the part of the record that witness No.5 for the petitioner-plaintiff came to be examined on 24.07.2000, whereas this application Exh.129 came to be filed on 23.02.2007. The learned counsel for the petitioner submits that the further proceedings in the suit are stayed right from the year 2007 in terms of the stay granted by this Court and therefore ignoring the delay caused in filing the application seeking amendment, the petitioner's application may be considered. However, I find no merit in these submissions made on behalf of the petitioner. I find no fault in the order passed by the Trial Court. Hence, I proceed to pass the following order :

ORDER

- (i) Writ Petition is hereby dismissed.
- (ii) Rule discharged.
- (iii) Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-