

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO.352 OF 2020

SUDAM TRIMBAKRAO POPHALE AND OTHERS
VERSUS
KRISHNA VITTHAL PADALKAR AND OTHERS

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Mr. S.A. Patil, Advocate holding for
Mr. V.D. Salunke, Advocate for the petitioners.

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CORAM : **Rohit B. Deo, J.**

DATE : 22nd January 2020.

PER COURT :-

. The petitioners are the defendants in a suit brought by the respondents -plaintiffs for cancellation of sale deeds dated 12.09.2001 and 22.01.2002 executed by Shri Vitthal Patolkar, who was the father of plaintiff Nos.1 to 3 and the husband of plaintiff No.4.

2. Perusal of the plaint would reveal that the sale deeds are assailed on several grounds. It is alleged in the plaint that the sale deeds are forged and fabricated. At one stage in the plaint, a reference is made to Vitthal being a habitual drinker and averment which follow the said reference is that Vitthal was defrauded and misled into executing the sale deeds. It is further alleged in the plaint that the

permission granted by the Deputy Collector to execute the sale deed is illegal.

3. The defendants preferred application (Exh.44) purportedly under Section 9 of the Code of Civil Procedure seeking dismissal of the suit in view of the provisions of Section 41 of the Maharashtra Agricultural Lands (Ceiling and Holding) Act, which is rejected by the order impugned.

4. Section 41 of the said Act reads thus :

“41. No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Commissioner, Collector, Tribunal, the officer authorised under section 27, the Maharashtra Revenue Tribunal or the State Government”.

5. Perusal of Section 41 would reveal that the bar of jurisdiction would be attracted only if the civil court is called upon to settle, decide or deal with any question which is under the Act required to be settled, decided or dealt with by the Officers / Tribunal / Authority under the Act.

6. My attention is invited to Section 29 of the said Act, which reads thus :

29. (1) Without the previous sanction of the Collector, no land granted under section 27 or granted to a joint farming society under section 28, shall be -

(a) transferred, whether by way of sale (including sale in execution of a decree of a civil court or of an award or order of any competent authority) or by way of gift, mortgage, exchange, lease or otherwise; or

(b) divided whether by partition or otherwise, and whether by a decree or order of a civil court or any other competent authority,

such sanction shall not be given otherwise than in such circumstances, and on such conditions (including condition regarding payment of premium or nazarana to the State Government), as may be prescribed.

Provided that, no such sanction shall be necessary where land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in sub-section (4) of section 36 of the Code for raising a loan for effecting any improvement of such land.

(2) If sanction is given by the Collector to any transfer or division under sub-section(1) subsequent transfer or division of land shall also be subject to the provisions of sub-section (1).

(3) Any transfer or division of land, and any acquisition thereof, in contravention of sub-section (1) or sub-section (2) shall be invalid; and as a penalty therefor, any right, title and interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector and shall without further assurance vest in the State Government”.

7. Learned Counsel for the petitioners may have a point to the extent that the legality of the sanction, if any, may have to be decided by appropriate authority under the

Act. However, the other issues which arise in the suit do not lie within the domain of the authorities under the Act. Whether the sale deeds are vitiated due to fraud or for any other reason, would be issues which the Civil Court can alone decide.

8. In this view of the matter, while I am not impelled to set aside the order impugned in writ jurisdiction, it is made clear that if the defendants prefer an application seeking reference of any particular issue to the competent authority under the Act, the said application shall be decided on its own merits and in accordance with law.

9. The petition is disposed of.

(ROHIT B. DEO, J.)