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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.51 OF 2018
WITH
CIVIL APPLICATION NO.1633 OF 2017
IN
SECOND APPEAL NO.51 OF 2018**

Mr. Namdev Vetu Sanap Appellant.

V/s

Mr. Narayan Satu Amruskar Respondent.

Ms. Gauri Godse for the Appellant.

Mrs. Teja Katore i/b Ms Alpa T. Javeri for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 10, 2020

P.C.:-

1] This appeal is by original Defendant.

2] Respondent/Plaintiff initiated suit for permanent injunction being Regular Civil Suit No. 63 of 1993 alleging that Gat No.88 Hissa No.1 admeasuring 1 Hectare 12.8 R out of village Varasgaon belongs to him. According to him, under the provisions of the Maharashtra Tenancy and Agricultural Lands Act, ownership Certificate under Section 32-M was issued in his favour. It is further claimed that Gat No.88 Hissa No.0, suit property, though Defendant not concerned

with, Defendant encroached on the same.

3] It is also alleged by the Respondent/Plaintiff that Survey No.45, Survey No.49 and Survey No.211 A/13/2 which were earlier consisted of Gat No.88, Survey Nos. 45 and 49 are Paddy lands and Survey No.211 A/13/2 is Paddy and Warkus (waste) land.

4] In the said suit, it is claimed that present Appellant/original Defendant carried illegal construction to the extent of encroachment of 10.90 mtrs x 8.50 mtrs. As such, suit for injunction and removal of encroachment was brought in action.

5] Appellant/Defendant resisted suit claim by filing Written Statement at Exhibit-51 and alleged that the construction, as was carried out by Appellant/Defendant, is standing for more than 25 years and as such, he was in permissive possession. It is also claimed by the Defendant that he being owner of Gat No.101, Old Survey No.211 A/13A, construction of the structure was carried after obtaining permission from Grampanchayat.

6] The learned Trial Court having regard to rival claims in the suit, framed issues at Exhibit-98. The said issues and findings thereon are as under:-

<u>Issues</u>	<u>Findings</u>
1. Does plaintiff proves that Gat No.88 admj. Hector 12.8 R of Village Varasgaon belongs to him?	In the affirmative
2. Does he further proves that he is the owner and possessor of the above land?	In the affirmative
3. Does he further proves that the defendant has made an encroachment by 10.90 mtrs x 8.50 mtrs over his land?	In the affirmative.
4. Is Plaintiff entitled to recover the said encroachment area from the defendant?	In the affirmative
5. Is plaintiff entitled to claim perpetual as well as Mandatory injunction as he sought?	In the affirmative
6. Does defendant proves that suit is false and frivolous hence compensatory cost be awarded?	In the negative
7. Does defendant proves in alternative that he becomes the owner of encroachment area by way of adverse possession?	In the negative
8. What order?	As per final order.

7] In support of the claim put-forth in the Plaint, Respondent/Plaintiff examined himself at Exhibit-103 and Surveyor at Exhibit-126, whereas Appellant/Defendant has been examined at Exhibit-145 and another witness has been examined at Exhibit-

157. Both the parties have relied on respective revenue records, extract of Consolidation Scheme, Court Commissioner Measurement Report and Report of the Cadastral Surveyor. Trial Court decreed the suit vide judgment and order dated 30/01/2003, which was confirmed in Regular Civil Appeal No.14 of 2008 vide impugned judgment and order dated 04/08/2017. As such, this second appeal by the original Defendant.

8] Ms. Godse, learned Counsel for the Appellant would strenuously urge that Respondent/Plaintiff has failed to establish his title over the suit property. According to her, in view of provisions of Sections 24, 32, 36A and 36B of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to for the sake of brevity as “the said Act”), suit has been dismissed.

9] The learned Counsel for the Appellant would insist that proceedings for issuance of Certificate under Section 24 of the Act are already pending before the competent revenue authority, which is likely to be decided in his favour. Hence, this Court either differ hearing of appeal or else record a finding that decree is unexecutable

till revenue authority decides the issue based on the objection raised by the Appellant pending before the revenue authority under the said Act. As such, question of law which is sought to be agitated is, “whether Courts below have committed an error apparent on the face of record in decreeing the suit for injunction in the absence of Certificate under Section 24 of the said Act?”

10] With the assistance of learned Counsel for the Appellant, I have perused the judgments of both the Courts below. Fact remains that Revenue proceedings for correction of record initiated by the Appellant are pending for more than last 15 years. Learned Counsel for the Appellant informs that, time and again, Appellant approached this Court in writ jurisdiction for issuing direction to the authority to decide his proceedings for issuance of Certificate of ownership of land in his favour. Fact remains that pendency of aforesaid proceedings was also an issue which was canvassed before the learned lower Appellate Court. Even before the lower Appellate Court, Appellant has tried to impress upon the Court to differ hearing pursuant to provisions of Section 36A and 36B of the said Act. However, the Court has rightly rejected the said prayer.

11] The evidence and factual matrix, as reflected on the record, demonstrates that parties to the appeal were tenants and by virtue of proceedings under the Maharashtra Tenancy and Agricultural Lands Act claimed to have established their respective title and possession over the suit property.

12] Revenue Extracts of the Consolidation Scheme were produced at Exhibit-142 which demonstrate that land Gat No.88 was allotted to Respondent/Plaintiff and as such, necessary revenue entries were effected in favour of the Plaintiff based on which his claim for injunction was accepted by both the Courts below based on title. If we see the Scheme of Section 21 of the said Act, what can be noticed is, while implementing the same if standing crops are there or any such eventuality is noticed by Consolidation officer, he is authorized under Section 21 of the said Act to put the concerned party in possession. It is by virtue of these proceedings, Respondent/Plaintiff appears to be in possession of the suit property. Section 19 of the said Act provides for publication of draft Scheme and of amended draft Scheme, whereas Section 20 confers power of confirmation of draft Scheme or amended draft Scheme, whereas Section 21 contemplates enforcement of the

Scheme.

13] It is not in dispute that after draft Scheme was published, Appellant has not raised any objection. Rather, in the subsequent proceedings Appellant has tried to raise an issue under Section 32 for varying the Scheme on the ground of error, irregularity and informality. Correction sought in the revenue proceedings is perhaps not based on plea of clerical or arithmetical error as contemplated under Section 31A of the said Act.

14] After issuance of Notification stating that the Scheme has been confirmed by the Settlement Commissioner, Sub-section 3 of Section 21 of the said Act provides for, owners can be put in possession of the holding to which they are entitled under the Scheme and for doing so further provides for eviction of the person from land in relation to which evictee is not entitled to continue to occupy under the Scheme.

15] As such, the Respondent/Plaintiff claimed his right through the Scheme as was published and attained finality qua the Act under Section 20 thereunder till the claim of the Appellant pending under

Section 20 of the Act is accepted.

16] Merely because proceedings for correction are pending at the behest of present Appellant that too for a period of more than 15 years, that by itself will not make the decree unexecutable. Courts below based on oral and documentary evidence are justified in recording findings in favour of Respondent/Plaintiff.

17] This Court is required to deal with rival claims of the parties based on the pleadings and evidence as is placed on record on the date of hearing of the proceedings

18] Both the Courts below on facts have recorded finding that Respondent/Plaintiff is in possession by virtue of his title and the Appellant is trying to encroach upon the land and as such decreed suit for injunction.

19] In the aforesaid backdrop, merely in the absence of Certificate under Section 24 of the said Act, decree cannot become unexecutable. The answer to submissions of the learned Counsel for the Appellant

lies in sub-section (4) of Section 21 of the said Act.

20] In the aforesaid background, against the concurrent findings, this Court see no reason which calls for interference, particularly in the absence of any substantial question of law. Second appeal as such fails and same stands dismissed. As a consequence, Civil Application taken out therein does not survive and same also stands disposed of.

21] However, it is clarified that Appellant/original Defendant will be at liberty to take out such proceedings as are permissible and available in law in case proceedings taken out by him under the provisions of the said Act are answered in his favour.

22] I am informed that during pendency of appeal, there was stay to the decree passed by the Trial Court. In the present second appeal also, this Court has ordered no coercive steps, which is holding field for about two years. In view of above, execution shall remain stayed for a period of four weeks from today.

(NITIN W. SAMBRE, J.)