

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.8 OF 2020

Sulochanabai w/o Suryabhan Nande
and others

... **APPLICANTS**

VERSUS

Namdeo s/o Champati Khokle
and others

... **RESPONDENTS**

.....

Shri S.B. Chavan, Advocate for applicants
Shri S.S. Londhe, Advocate for respondents No.1 and 2
Shri A.B. Chate, A.G.P. for respondents No.3 to 5

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CORAM : R. G. AVACHAT, J.

Date of reserving order : 10th February, 2021

Date of pronouncing order : 10th June, 2021

ORDER :

The challenge in this revision application is to the order dated 24/4/2018, passed by the Court of Civil Judge, Senior Division, Hingoli, below Exh.1 in the suit, being Regular Civil Suit No.50/2015. By the impugned order, the preliminary issue as to whether the Civil Court has jurisdiction to entertain and try the said suit has been answered in the affirmative. The original defendants No.4 to 11 have, therefore, preferred the present revision.

2. The Agricultural land Gut No.258, situated at village Pedgaon, Taluka and District Hingoli belonged to Suryabhan Haribhau Nande. The applicants herein are Class-I heirs/ legal representatives of late Suryabhan. The respondents No.1 and 2 are the original plaintiffs. They filed the suit, Regular Civil Suit No.50/2015 for declaration of their title to the suit land (3 Hectors 93 R) in Gut No.258. They also prayed for relief of rectification of the sale deed dated 10/6/2003, executed by deceased Suryabhan in favour of plaintiff No.1/ respondent No.1. It is their case that, late Suryabhan sold the land admeasuring 3 Hectors 93 R under the sale dated 10/6/2003. It was, however, transpired that, inadvertently, only the land admeasuring 93 R has been shown to have been sold under the sale deed. The entire land Gut No.258, admeasuring 3 Hectors 93 R is said to be in their possession. They have, therefore, prayed that the sale deed be rectified stating that the land admeasuring 3 Hectors 93 R has been sold. A relief of perpetual injunction restraining the applicants herein from disturbing the possession of the plaintiffs over the suit land has also been sought for.

3. The applicants, original defendants No.4 to 11 appeared in the suit. The other defendants are the revenue

authorities. The applicants preferred application Exh.54 for framing a preliminary issue as to jurisdiction of the Civil Court to entertain and try the suit. It is the contention of the applicants that, late Suryabhan belonged to Scheduled Tribe. The land belonging to tribal cannot be transferred by sale without prior permission of the Collector. The bar is absolute. The sale deed executed without obtaining permission is invalid. The land is liable to be restored to the applicants in the capacity as heirs of deceased Suryabhan. The Civil Court, therefore, did not have jurisdiction to entertain and try the suit.

4. The learned Civil Judge, Senior Division, Hingoli held the Civil Court to have jurisdiction to try the suit. The learned Civil Judge relied on Section 9 of the Civil Procedure Code. According to the learned Judge, the reliefs of declaration of title, rectification of instrument and consequential injunction can only be granted by the Civil Court.

5. Shri S.B. Chavan, learned counsel for the applicants relied on Section 36-A of the Maharashtra Land Revenue Code, 1966 (M.L.R.C.) and the provisions of the Maharashtra Restoration of Land to Scheduled Tribes Act,

1974 (for short the Act of 1974). According to him, the Civil Court has no jurisdiction to decide the issue, which is required to be decided or dealt with under the Act of 1974 by the authorities namely Collector, Commissioner, Maharashtra Revenue Tribunal (M.R.T.) or the State Government. The learned counsel has relied on a judgment of this Court in Second Appeal No.118/2018 (Babasaheb s/o Dhondiba Kute Vs. Radhu Vithoba Barde, decided on 12/12/2018) and Writ Petition No.1338/2020 with bunch of writ petitions (Gautamsheth Kisan Wadve & anr. Vs. Kisan Gangaram Kale & ors. Etc., decided on 29/7/2020). The learned counsel ultimately urged for allowing the revision application in terms of prayer clauses C and D.

6. Shri S.S. Londhe, learned counsel for respondents No.1 and 2 reiterated the reasons given by the learned Judge in support of the impugned order. According to Mr. Londhe, it is only the Civil Court which has jurisdiction to grant reliefs such as declaration of title to immovable property, rectification of instrument and consequential relief of perpetual injunction.

7. Section 9 of the Civil Procedure Code reads :-

“9. Courts to try all civil suits unless barred.—

The Courts shall (subject to the provisions herein

contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I.— A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

.....”

It is settled proposition of law that, jurisdiction of the Civil Court is to be ascertained from averments in the plaint.

8. The suit has been filed for the relief of declaration of title to the agricultural land. A further relief of rectification of the sale deed dated 10/6/2003 has also been sought for with a consequential relief of perpetual injunction. The averments in the plaint and the reliefs claimed in the suit undoubtedly suggest that it is a Civil Court and not any other authority which can grant such reliefs. The trial Court was, therefore, right in answering the preliminary issue in the affirmative, holding the Civil Court to have jurisdiction to entertain and try the suit.

9. There is, however, another aspect of the matter. The issues framed, if any, in the suit are not available for

perusal by this Court. It is a specific contention of the applicants that, late Suryabhan belonged to Scheduled Tribe. There is on record a copy of the Tribe Certificate issued by the competent authority indicating late Suryabhan to have belonged to Andh(1) caste, which has been recognised as a Scheduled Tribe. In the other rights column of the 7/12 extract of the suit land, there is a remark that the land belonged to tribal and, therefore, there is prohibition for transfer of the said land.

10. Section 36-A of the Maharashtra Land Revenue Code, 1966 speaks for restriction on transfer of occupancy by tribal. Section 36-A(1) reads :-

36A. (1) Notwithstanding anything contained in sub-section (1) of section 36, no occupancy of a Tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction—

(a) in the case of a lease or mortgage for a period not exceeding 5 years, of the Collector ; and

(b) in all other cases, of the Collector with the previous approval of the State Government :

Provided that,

(2)

(3)

(4)

(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may , from time to time.

(6)

11. The Scheme of Section 36-A above indicates that for transfer of a land belonging to tribal by sale, a previous permission of the Collector, with previous approval of State Government, is a must. Sale of such land without obtaining such permission is invalid.

12. Section 3 of the Act of 1974 reads :-

“3. (1) Where due to transfer –

(a) the land of a Tribal-transferor is held by a non-Tribal-transferee, or

(b)

and the land so transferred is in possession of the non-Tribal-transferee, and has not been put to any non-agricultural use on or before the 6th day of July,

1974, then, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any Court, Tribunal or authority, the Collector either suo motu at any time, or on the application of a Tribal-transferor, made, within thirty years from the 6th July 2004 shall, after making such inquiry as he thinks fit, direct that –

(i)

(ii) the land transferred otherwise than by exchange be taken from the possession of the non-Tribal-transferee, and restored to the Tribal-transferor, free from all encumbrances and the Tribal-transferor shall pay such transferee and other persons the amount determined under clause (b) of sub-section (4).

Provided that, where land is transferred by a Tribal-transferor, in favour of non-Tribal-transferee before the 6th day of July, 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so transferred shall be restored to the Tribal-transferor.

Explanation :

13. Section 10 and Section 10-A of the Act of 1974 are also relevant and, therefore, reproduced below for better appreciation :-

10. No civil Court shall have jurisdiction to settle, decide or deal with any question which under this Act is required to be decided or dealt with by the Collector, the Commissioner, the Maharashtra Revenue Tribunal or the State Government.

10A. Notwithstanding anything contained in section 5 or any other provision of this Act or in

any other law for the time being in force, where possession of any land is to be restored to any Tribal-transferor or non-Tribal-transferee under any provision of this Act, it shall always be lawful for the Collector to evict any person not entitled to possession of the land, or any person wrongfully in possession thereof, at any time, in the manner provided in section 242 of the Code.

14. In view of terminology of Section 10 of the Act of 1974, the Civil Court has no jurisdiction to settle, decide or deal with any question which under the said Act is required to be decided or dealt with by the Collector, Commissioner, M.R.T. or the State Government. There is prima facie evidence to indicate that deceased Suryabhan belonged to Scheduled Tribe. Necessarily the suit land became the tribal land, the transfer by sale of which could not have been effected without prior permission of the Collector. Admittedly, the sale deed has been executed without obtaining prior permission of the Collector. The land, therefore, may become liable to be restored to the tribal transferor or his heirs (applicants herein). The trial Court is, therefore, expected to frame an issue in this regard and refer the same to the Collector/ Deputy Collector for finding thereon. The trial Court is expected to stay the hearing of the suit until the finding on the issue is received from the competent Court. It

is also made clear that, the applicants, on their own, can approach the competent authority under the Act of 1974 for redressal of their grievance.

The Civil Revision Application thus stands disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-