

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5344 OF 2021

Uttam Dattu Mali and Ors. ..Petitioners
Vs.
Jagannath Bandu Mali ..Respondent

Mr. Aditya S. Raktade a/w. Mr. M. Purandare, for the Petitioners.

CORAM : C.V. BHADANG, J.
DATE : 8 SEPTEMBER 2021

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P.C.

. The challenge in this Petition is to the order dated 30 August 2021 passed by the learned Civil Judge, Junior Division, Islampur. By the impugned order, the Application (Exh.24) filed by the Applicants (Defendant Nos.1 and 3 to 7) for stay of the Suit has been rejected.

2. The Respondent / Plaintiff has filed aforesaid Suit inter alia for an injunction restraining the Applicants / Defendants from obtaining any electric connection on the well situated in the Suit property described in paragraph 'A' of the plaint and further

restraining them from using the said well for irrigation purposes. The Applicants filed Application Exh.24 purportedly based on Section 36-B of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947. It was contended that the Respondent / Plaintiff has moved an Application before the Competent Authority under the said Act stating that there is certain error in the matter of allotment of survey numbers. It was contended that the property described in paragraph 'A' has been wrongly allotted Survey No.857/3 and the property which is set out in paragraph B has been wrongly allotted Survey No.857/6. Thus, according to the Petitioners, unless and until the said Application filed by the Respondent / Plaintiff is decided by the Authority under the said Act, the Suit should be stayed.

3. The learned Trial Court has found that the Applicants have not filed any Written Statement to the Suit nor any reply to the Application for temporary injunction. The Trial Court has found that under Section 36-A the jurisdiction of the Civil Court is barred only in respect of the issues which are required to be settled, decided or dealt with by or under the said Act by the State Government or any Officer or Authority. The Trial Court has found that the Suit as it stands today only involves the right over the well situated in the Suit property described in paragraph 'A' of the plaint and does not involve any issue as to consolidation of holdings.

4. I have heard the learned counsel for the Petitioners.

5. Learned counsel for the Petitioners submitted that the Respondent / Plaintiff himself is not clear about the right over the said well. It is pointed out that there are three wells in the Suit property and therefore, unless and until the Application filed by the Respondent / Plaintiff is decided by the Authority under the said Act, the Suit deserves to be stayed.

6. I have considered the circumstances and the submissions made and I do not find that any case for interference is made out at this stage. Section 36-A and 36-B of the Act of 1947 which are relevant for the purpose read thus-

Section 36A – Bar of jurisdiction (1) No Civil Court or Mamlatdar’s 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 State Government or any officer or authority.

(2) No order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdar’s Court.

36B. Suits involving issues required to be decided under this Act.- (1) If any suit instituted in any Civil Court or Mamlatdar’s Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act

(hereinafter referred to as the 'competent authority') the Civil Court or Mamlatdar's Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court or Mamlatdar's Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court or Mamlatdar's Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

It can thus be seen that the jurisdiction of the Civil Court or the Mamlatdar's Court is barred only to the extent of issues which are required to be settled, decided or dealt with by or under the said Act by the State Government or any Officer or Authority under the said Act.

7. As of present, the Petitioners have not even filed their Written Statement to the Suit nor reply to the temporary injunction. The plaint as it stands and the prayer made therein shows that it is restricted to the drawal of water and the rights over the well situated in the suit property described in paragraph 'A' of the plaint. Thus, unless and until, the Petitioners file reply / Written Statement, it is not possible for the Trial Court to determine the issues which are required to be dealt with in the Suit and once such issues / points are determined, then only it will be possible for the Trial Court to

examine whether the issue is required to be referred to the Authority under the said Act or otherwise. In my considered view, the prayer at this stage is premature.

8. In the result, the Petition is disposed of.

9. It will be open to the Trial Court to consider the ground based on Section 36-B of the said Act after the Petitioners file Written Statement and the issues are framed.

C.V. BHADANG, J.