

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 110 OF 2020
WITH
CIVIL APPLICATION NO. 6171 OF 2021 IN SA/110/2020

1. Imamali Nyajali Saiyyad
Age : 51 years, Occupation : Labour,
R/o. KGN Colony, Chopda,
District Jalgaon
2. Subhanali Nyajali Saiyyad
Age : 43 years, Occupation : Labour,
R/o. Paldhi, Tq Dharangaon, Dist. Jalgaon
3. Salamabi Sk. Mohiddin Saiyyad
Age : 49 years, Occupation : Household,
R/o. Shirapur District Dhule
4. Halimabai Sk. Nasir Saiyyad
Age : 47 years, Occupation : Household,
R/o. Mustapha Colony, Chopda,
District Jalgaon
Through their power of Attorney
Appellant no. 2.

.. Appellants/
(Original Plaintiffs/LRs)

Versus

Sau Hemlata Suresh Borole
Age : 44 years, Occu:- Agriculture
R/o : Pankaj Nagar, Chopda,
Tq. Chopda District – Jalgaon

.. Respondents
(Original Defendant)

...
Mr. Ameet R. Vaidya, Advocate for appellants
Mr. V.D. Sapkal, Sr. Advocate i/b. Mr. S.R. Sapkal and Mr. P.S. Gaikwad,
Advocate for respondent
...

CORAM : MANGESH S. PATIL, J.

DATE : 5 JANUARY 2022

ORAL ORDER :

The unsuccessful legal representatives of original plaintiff
are impugning the concurrent findings of the two Courts below, whereby

the suit seeking a declaration of title to the suit property being a portion admeasuring 2 Hectare 55 Are and perpetual injunction restraining the respondents - defendants from obstructing their peaceful possession over it, has been dismissed and the decree has been confirmed.

2. Needless to state that in view of such concurrent findings, the scope for this Court to cause interference in exercise of the powers under section 100 of the Code of Civil Procedure, is limited. Not only a pure question of law but there has to be a substantial question of law to enable this Court to cause interference in the concurrent findings of the facts or else it is demonstratable that such findings are based on no evidence and are perverse.

3. Bearing in mind the above proposition, if one examines the matter, the appellants, in substance are agitating that though they are the owners of an erstwhile land survey no. 474 admeasuring 2 Hectare 55 Are, it was erroneously recorded as 1 Hectare 55 Are while implementing the scheme under the Maharashtra Prevention of Fragmentation and Consolidation and Holdings Act, 1947 (for short "**the Consolidation Act**"). After which it was allotted Gat no. 924. They had got the land admeasuring 1 Hectare 53 Are converted to non-agricultural use and still the remaining portion admeasuring 1 Hectare 2 Are continued to be in their possession.

4. The learned Advocate Mr. Vaidya for the appellants would submit that ex facie, going by the record of the consolidation scheme, it

was apparent that there was an error inasmuch as a considerably less portion was shown to be allotted to the appellants. Realizing the fact, they have also approached the Settlement Commissioner during the pendency of the suit, as is pointed out by the appellate Court in the judgment under challenge. He would, therefore, submit that the record of the scheme was available for the trial Court as also the appellate Court to be seen showing such error. Even the appellate Court, prima facie accepted the evidence of the appellants' witnesses, showing their possession over 1 Hectare 2 Are portion, if not the declaration, atleast their case for perpetual injunction could have been considered. Both the Courts below have grossly erred in not appreciating the facts and circumstances while non-suiting the appellants.

5. The learned Advocate Mr. Vaidya would further point out that when a witness summons was issued to the concerned Superintendent of Land Records Office to bring on record the measurement maps, pursuant to the correction carried out in the scheme under the Consolidation Act in the year 1992, he had replied by his letter dated 07-10-2013 at Exhibit 127 that it was advisable to undertake a fresh measurement. It is in the light of such stand of the Office of the Surveyor, initiative could have been taken by the Courts below to atleast direct fresh measurement which would have sorted out the dispute between the parties. Since the Courts have failed to exercise such jurisdiction to consider all these aspects, the substantial

question of law does arise and needs to be examined and answered by this Court.

6. The learned Senior Advocate Mr. Sapkal for the respondents submits that the appellants have chosen a wrong forum and erroneous remedy. The crux of the dispute, even according to them, is the error committed while implementing the scheme under the Consolidation Act. Both the Courts below have rightly appreciated these facts and circumstances. In view of the provisions of Section 36A of the Consolidation Act, the jurisdiction of the civil Court is expressly barred to go into and examine the scheme finalized under that Act. Perhaps realizing the error, even the appellants have now approached and preferred a proceeding before the Settlement Commissioner under the Consolidation Act, for correction of the record and the proceeding is pending.

7. He would, therefore, submit that so long as the scheme under the Consolidation Act is not re-visited and modified, there would be finality in view of the provisions of section 36B of the Act. He would submit that both the Courts below have rightly appreciated the matter in controversy and have concurrently non-suited the appellants. The view taken by both the Courts, is a plausible view and cannot be interfered with by this Court in exercise of the powers under section 100 of the Code of Civil Procedure. No substantial question of law arise and the appeal be dismissed.

8. I have carefully considered the rival submissions and perused the papers including the judgments of the two Courts below. The crux of the matter, as can be appreciated from the facts and circumstances seems to be that though appellants claim to be the owners of the erstwhile land survey no. 474, totally admeasuring 2 Hectare and 55 Are during implementation of the scheme finalized under the Consolidation Act, its extent has been shown as 1 Hectare 55 Are. If this is so, when the appellants are claiming a declaration as to their title to the total land admeasuring 2 Hectare 55 Are, they certainly could not have been granted the relief, right in the teeth of the Consolidation record. The view and conclusions of the two Courts below, holding them not to be entitled to the declaration is, indeed, unsustainable. They have rightly appreciated the matter in dispute and have come to a reasonable conclusion on the basis of the record of the scheme under the Consolidation Act.

9. As can be appreciated, perhaps realizing the fact that the appellants will have to first establish and get the scheme corrected, seems to have approached the Settlement Commissioner, by preferring an appropriate proceeding under the Consolidation Act. The fact remains that so long as the scheme is not re-visited, no declaration, as is being claimed, can be granted.

10. Needless to state that if at all the scheme is revisited and some correction is made in a proceeding under the Consolidation Act, the appellants would certainly be entitled to reap the benefit.

11. For the time being, when the appellants are seeking to indirectly question the scheme finalized under the Consolidation Act, corrected subsequently in the year 1992, certainly the jurisdiction of the civil Court is clearly barred under section 36A, albeit, the trial Court has erroneously referred to a provision under the Maharashtra Land Revenue Code. The appellants are seeking to invoke the jurisdiction of the civil Court and to undertake a scrutiny, touching the implementation of the scheme under the Consolidation Act. This cannot be done legally in the light of the provision of Section 36A of the Consolidation Act, though, the Courts below have not specifically referred to this provision.

12. The upshot of the above discussion, no substantial question of law arises when the Courts below have taken a plausible view of the facts and circumstances of the case.

13. The Second Appeal is dismissed. Pending civil application is disposed of.

[MANGESH S. PATIL, J.]

arp/