



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2522 OF 2024

Sakharam Adinath Doke

VERSUS

Vikas Raghunath Doke And Another

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Mr. P. D. Dadpe a/w Mr. N. S. Tekale, Advocates for the
Petitioner

Mr. Shaikh Shoyab, Advocate for Respondent

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CORAM : R.M. JOSHI, J

DATE : JUNE 26, 2024

PER COURT :

1. By consent of the parties, heard finally at
admission stage.

2. This Petition depicts peculiar facts involved
in Special C. S. No. 4/2017. Defendant is the brother
of Plaintiff No. 2. Plaintiff claims that he is the
owner of the suit property on the basis of sale deed
bearing no. 862/2001 in respect of 4 R land. It is
alleged in the plaint that the Defendant No. 2 is in
possession of the suit property without there being any
right created in his favour.

3. Defendants filed written statement to claim
that the suit property has been purchased under sale

deed in question out of consideration paid by him to Plaintiff. He, therefore, claims right, title and interest into the said property on the basis of very same sale deed relied upon by Plaintiff. On one breath he claims title in the suit property on the basis of sale deed whereas in the next breath, he takes plea in paragraphs 21 and 22 of the written statement to the effect that the sale deed is in contravention with the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short '**Consolidation Act**') as well as the Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961 (for short '**Ceiling Act**').

4. In the light of these averments pursuant to the impugned order passed following additional issues were framed by Trial Court :

3A:- Whether the defendant proved that, Nagu Ahire & Ashwini Doke annexed bogus permission of the Collector under the Ceiling Act to the sale deed ?

3B:- Whether the defendants prove that the sale deed or Plaintiff is hit by provisions of Maharashtra Prevention of Fragmentation & Consolidation of Holdings Act?

5. After these issues were framed, an application was moved by Defendant for referring the issue no. 3A to the competent Authority under the Act of 1961 and 3B to the competent Authority under the Act of 1947. Learned trial Court rejected the said application. Hence, present Petition is filed.

6. Learned Counsel for the Petitioner submits that once a statement is made in the written statement by the Defendant that the sale deed in question is hit by the provisions of Consolidation Act, the issue is required to be framed and such issue cannot be decided by the Civil Court. This issue is required to be referred to the competent Authority under the provisions of Act of 1947. To support his submissions, he placed reliance on judgment of this Court in case of Mrs. Geetabai Mahagulai Panchbudhe and Anr vs. Kailash Prakashchandra Makkad, Writ Petition No. 5746 of 2017 & Vilas Shivmurti Munde vs. Somnath Santram Kumbhar and Others, Second Appeal No. 521 of 2016.

7. Learned counsel for Respondent supported the impugned order by contending that though the Defendant has raised averments with regard to the non-compliance

to provisions of Ceiling Act, however, it is pleaded in paragraph No. 21 that the permission used for the transaction of sale is bogus. It is, therefore, submitted that this issue as to whether the permission is bogus or otherwise would be subject matter of decision of the Civil Court and that no reference is required to be made to the Competent Authority. As far as the objection raised about the sale deed of the Plaintiff being hit by the provisions of Consolidation Act is concerned, it is submitted that though such issue is framed by the Trial Court, in fact in absence of any counter claim capable of being tried, it is open for the Court to pronounce the final judgment on the same in the suit. Apart from this, it is contended that on the basis of vague and unsubstantiated statements, it is not open for the trial Court to refer the said issue in view of the provisions of Section 36-A of the Consolidation Act.

8. Plaintiff has filed the suit on the basis of sale deed executed in respect of the property. Defendant claims that he has purchased the said property through Plaintiff and that the consideration

is paid by him to the vendor. Thus, Defendant also claims title in respect of the suit property on the basis of sale deed in question. In paragraph No. 21 of the written statement, it is alleged by the Defendant that the said sale deed was obtained by using bogus permission of the competent authority under the Ceiling Act. Perusal of the said averment shows that it is a case of Defendant that there was permission for the said transaction, however, the said permission is bogus. This issue, therefore, certainly will have to be decided by the Trial Court as the burden is on the Defendant to substantiate his allegation and not by any Authority under the Ceiling Act.

9. With regard to the contention that the sale deed being hit by provisions of Consolidation Act is concerned, the averments in this regard in paragraph No. 22 are absolutely vague. There is no averment to the effect that the permission was not obtained from the Competent Authority before purchasing the suit land by the Plaintiff. Merely on the statement that the transaction of sale is in respect of 4 R land, it cannot be said that it is in contravention with the

provisions of the Act. In absence of complete bar to the transaction of any land below limited prescribed by the act, it cannot be said that transaction in question is not by said provisions. Hence, in order to claim that the sale deed is hit by the provisions of the said Act, there ought to have been specific pleading to that effect. Apart from this, Defendant has not filed any counterclaim in order to call upon the Trial Court to decide the said issue and pronounce the judgment thereon.

10. In the light of aforestated facts, if the order impugned is perused, then it clearly shows that the Trial Court has taken into consideration the pleadings of the parties and the issues that arise for determination before the Court. It is observed that there is no pleading by both the parties about suit property being affected by scheme of consolidation. In the light of facts and circumstances of the case and the reasons recorded by the learned Trial Court, this Court finds no perversity in the impugned order for causing any interference therein.

11. As a result of above discussion, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani