



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 331 OF 1998

Jagannath Eknath Pisal since deceased through L.Rs.

VERSUS

Bhagwan Rangnath Pisal And Ors.

Mr. M. K. Deshpande, Advocate for Appellant

Mr. P. S. Chavan, Advocate for Respondent Nos. 1 and 2

CORAM : R. M. JOSHI, J.

DATE : 18th February, 2025

PER COURT :-

1. This appeal filed under Section 100 of the Code of Civil Procedure takes exception to the concurrent findings recorded by the Trial Court and First Appellate Court in Regular Civil Suit No. 205/1987 and Regular Civil Appeal No. 109/1991 respectively. Trial Court decreed suit filed by plaintiffs for injunction against defendants restraining them for causing interference due to the possession of plaintiffs over the suit property being Gut No. 244 situated at Rui (Limba), Tal. Beed, Dist. Beed. Decree passed by the Trial Court granting injunction came to be confirmed by the First Appellate Court and hence this appeal.

2. While admitting the appeal, this Court has framed substantial question of law in terms of ground No. 2 which reads thus :-

II. Whether the suit filed by the Respondent No. 1 and 2 the

Original Plaintiffs was maintainable in view of the pendency of enquiry before the consolidation authorities.

3. Parties are referred to as "Plaintiffs" and "Defendants" for the sake of convenience.

4. The facts which are necessary for the purpose of decision of this appeal are as under :-

Plaintiffs filed suit seeking injunction against defendants restraining them from causing interference into the possession of plaintiffs over the suit property i.e., Gut No. 244 admeasuring 3 Hector 45 R. It is the case of plaintiffs that Gut No. 244 pursuant to the implementation of consolidation scheme contains parts of survey Nos. 64, 65 and 49. These surveys were ancestral properties and in partition, respective share holder was given possession of the properties. It is a case of plaintiffs that in the time of implementation of consolidation scheme since the time of his father i.e., on implementation of consolidation scheme, he has become exclusive owner thereof. It is stated that in the south west corner of Sr. No. 64 cattle shed is situated and though defendants had agreed to remove the same, did not actually do so. There is specific averment that defendants are causing interference into the possession of the plaintiffs was a suit property and hence suit for simplicitor injunction came to be filed. Defendants

registered the suit. Defendant No. 3 filed written statement denying the contentions raised by the plaintiffs. It is sought to be contended in the written statement that the consolidation scheme has not been implemented in accordance with rule and that Defendant No. 3 continued to be in possession of the portion of Gut No. 244. It is specifically averred in the written statement that Defendant No. 3 has raised objection to the scheme of consolidation to the Competent Authority and the said challenge is pending.

5. After issues were framed, both plaintiffs and defendants led both oral and documentary evidence.

6. Learned Trial Court decreed the suit by taking into consideration the evidence led before it more particularly Exhibit 99 and 100. Exhibit 99 indicates that plaintiffs and defendants have given consent for consolidation scheme therein. It is also referred that plaintiffs would be entitled to receive share in the water from the common well. There is evidence led by the plaintiffs to indicate that new well was also dug in the suit property. Exhibit 100 indicates that the possession was taken by respective sharers i.e., plaintiffs and defendants and panchanama was drawn accordingly. With these evidence on record, Trial Court held that the plaintiffs are in possession of the suit property and that order of injunction came to be passed against defendants.

7. Before the First Appellate Court apart from challenge to the findings of fact recorded by the Trial Court, issue was also raised with regard to the pendency of proceedings initiated by Defendant No. 3 under the Provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (for short "**the Act**"). The First Appellate Court has rejected the contentions of Defendant No. 3 on the ground that the suit for injunction would certainly be maintainable irrespective of the fact that there is any challenge to the consolidation proceedings before the Competent Authority. It is also held that the correctness of the consolidation proceedings cannot be gone into by the Civil Court in view of bar created by Section 36 A of the Act.

8. Learned counsel for the Appellant/Original Defendant No. 3 submitted that once there is challenge to the consolidation proceedings and the said challenge is pending before the Competent Authority, it was not open for the Trial Court to entertain the suit and the suit ought not to have been dismissed on that ground alone. To support his submissions, he placed reliance on the judgment of this Court in case of **Yeshwant Ramchandra Dhumal deceased by L.Rs Vs. Shri Shankar Maruti Dhumal and anr AIR 2001 Bombay 384** as well as in case of **Mrs. Geetabai w/o Mahagulal Panchabudhe & anr Vs. Kailash s/o Prakashchandra Makkad 2019(4) ALL MR 269.** He also attempted

to draw attention of this Court to the evidence on record which according to him indicates that the findings recorded by the Trial Court as well as First Appellate Court are perverse and hence not sustainable.

9. Learned counsel for plaintiffs supported the impugned judgment. It is his contention that in fact issues sought to be raised in the written statement by the defendants could not have been decided by the Civil Court in view of bar under Section 36A of the Act. It is his submission, on instructions, that the challenge made by the Defendant No. 3 to the consolidation scheme is rejected. Learned counsel for Defendant No. 3 was unable to rebut the same for want of instructions in this regard.

10. Admittedly, present suit is filed for injunction with the averment that the plaintiffs are in possession of the suit property, on the basis of implementation of consolidation scheme and that interference is being caused by defendants into his possession thereon. Needless to say that suit for injunction would be tenable before the Civil Court only. Competent Authorities under the Act would not get any right to entertain any dispute between the parties with regard to grant of injunction. Thus, there is no impediment to hold that the suit filed by plaintiffs is maintainable.

11. As far as objection raised by the Defendant No. 3 about tenability of the suit on the ground of there being challenge to the scheme implementing of consolidation is concerned, apart from the fact that now the said challenge is unsuccessful, even otherwise pendency of the same would not become an impediment for the Civil Court to pass order of injunction. In order to pass any order of injunction, it is for the Civil Court to ascertain whether the plaintiffs are in lawful possession of the suit property. Here, in this case, there is documentary evidence on record i.e., Exhibit 99 and 100 which shows that plaintiffs as well as defendants recorded written consent for the consolidation scheme and pursuant thereto, the parties were put into their respective separate possession of the lands. Thus, this evidence is more than sufficient to hold that plaintiffs are in lawful and settled possession of the subject property, which would be sufficient to protect their possession by grant of injunction.

12. Though, it is sought to be argued that no certificate of transfer has been issued in favour of the plaintiffs under Section 24 of the Act, it is pertinent to note that the evidence of Defendant No. 3 as well as witness examined by the defendants clearly indicate that Defendant No. 3 was also signatory to the panchanama pursuant to which the consolidation scheme came to be implemented and parties

were put into separate possession of the properties in question.

13. Once, such evidence is brought on record, only question remains as to whether it was open for the Trial Court to pass order of perpetual injunction against the defendants. At this stage, it would be relevant to take note of the judgment of this Court in case of Yeshwant and Mrs. Geetabai (cited supra) on behalf of Defendant No. 3. In case of Yeshwant (cited supra), issue before the Court involved as to amongst two allottees under the consolidation scheme and who should be in possession of any specific portion. This Court has held that this issue falls within jurisdiction of the Competent Authority under the Act and it was not open for the Civil Court to enter upon the said controversy. Similarly, in case of Geetabai (cited supra), issue involved therein was whether the land which is subject matter of the sale deed is fragmented. Whether a land is fragmented or not. Such issue to be decided by the Competent Authority and not by the Civil Court. Such however are not the issues involved in the instant case. Having regard to the material on record and facts involved in the said case and facts involved in the instant case, in considered view of this Court, said judgment would not help the Defendant No. 3 to substantiate his contention in any manner.

14. As against this, judgment cited on behalf of plaintiffs i.e., **Namdeo Bhau Chavan Vs. Smt. Shantabai Kundlika Chavan & ors.**

2011 (6) BCR 614 and **Prabhakar Kushba Hagwane and ors Vs. Yashwant Bhau Hagwane since deceased by L.Rs. Ganpat Yashwant Hagwand and ors** would be applicable to the case in hand.

It was held there in that Section 36 A excludes jurisdiction of the Civil Court in respect of the decision which are taken by the State Government or any officer for implementing provisions of the Act but not suit for simplicitor injunction restraining defendants from obstructing possession.

15. Perusal of Section 36 A of the Act indicates that it is beyond the jurisdiction of the Civil Court to settle, decide or deal with any question which is or by under this Act required to be settled, decided or dealt with by State Government or any officer or party. The case of the plaintiffs certainly is not covered by the rigors of the said provision. On the contrary, defendants contentions in the written statement to the extent of taking exception to the acts done by the Consolidation Authority while implementation of the scheme is not permissible to be agitated before the Civil Court.

16. Now question arises as to whether for the reason that the scheme of consolidation was challenged before the Competent Authority would become a ground of creating embargo for the Civil Court to entertain the suit for injunction. Candid answer thereto must be in

negative. The reason therefor is that even if it is accepted, there was no conclusive decision on the scheme of consolidation, there is consent evidence on record to indicate that consolidation scheme had been implemented by consent of parties and they were put into possession of the different lands. Having regard to these facts, substantial question of law framed herein above deserves to be answered in negative. As a result of the above discussion, appeal stands dismissed.

17. Learned counsel for the plaintiff seeks continuation of order dated 13.02.2001 for a period of 6 weeks to enable plaintiffs to challenge the order passed by this Court today before the Hon'ble Supreme Court.

18. Learned counsel for the respondent opposes the said request.

19. Since the order is in enforce for more than 24 years, same is extended for a period of 6 weeks.

(R. M. JOSHI, J.)

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