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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10534 OF 2018
WITH
CIVIL APPLICATION NO. 4354 OF 2023

Laxman Maroti Vibhute (Died) LRs & Others PETITIONERS

VERSUS

Shivkumar Gangadhar Vibute and Others RESPONDENTS

.....
Mr. U. B. Bilolikar, Advocate for the Petitioners
Mr. Gaurav L. Deshpande, Advocate for Respondents No.1 to 5
.....

[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 28th JANUARY, 2025

ORDER :

1. The Petitioners assail order dated 20th July, 2018 passed by learned Civil Judge, Junior Division, Dharmabad, District – Nanded below Exhibit-92 in Regular Civil Suit No. 28 of 2014.
2. The Petitioners had filed application Exhibit-92 with a prayer to frame addition issue, which reads thus:

“Whether the plaintiffs prove that the consolidation record prepared regarding Gut No. 130 of Chondi is incorrect?”
3. The application Exhibit-92 has been rejected by the Trial Court by order dated 20th July, 2018, therefore, the Petitioners are before this Court challenging the said order.

4. Facts leading to file Regular Civil Suit No. 28 of 2014, by the present Petitioner, who are original plaintiffs, can be summarized as under :

Common ancestor of Plaintiffs - Petitioners and Defendants No.1 to 5 and 9 to 16, who are respondents in this Petition, was one Santu Jakoji Wani. He was owner of 110 Acre 39 guntha land in different survey numbers in village Chondi. It is the case of the Petitioners that though partition was effected amongst heirs of Santu Jakoji Wani, but the lands were never measured. Respective sharers were cultivating and enjoying their own shares, but no measurement of actual area in their possession was ever carried out. Since their ancestors, the Plaintiffs as well as the Respondents - Defendants were enjoying the properties, which were in their possession. The suit land, which is part and parcel of old survey No. 50 was also in possession of the Plaintiffs and after the partition, they continued with possession as descendants of original owner. It is further contended that Defendants No.1 to 5 caused measurement of land Gut No. 130 of Chondi on 25th October, 2013 and 26th October, 2013. When the measurement was conducted, the Plaintiffs and Defendants realized that the Plaintiffs are in possession of the suit land, though it stands in the name of Defendants. In the measurement map, the suit land is described as it stands in Gut No. 130 and is

in possession of owner of Gut No. 181.

5. According to the Petitioners, the suit land is part and parcel of old Survey No. 50 and the Petitioners are owners of Gut No. 181. The Petitioners have executed sale deed in favour of Defendants No. 6, 7 and 8. In the measurement, which is conducted at the behest of Defendants No.1 to 5, it is revealed that the Petitioners are in possession of 2 Hectare 37 R land out of Gut No. 130. In the Pahani Patrak of 1954, Survey No. 46 and 50 are shown as *ad measuring* 33 Acre 38 Guntha and 1 Acre 29 Guuntha. Therefore, only after the measurement, it has transpired that though the Petitioners are in possession of the suit land, it is shown in the measurement map that the suit land belongs to Gut No. 130 and is in possession of the owner of Gut No. 181.

6. The names of the Petitioners should have been shown as owners of Gut No. 130 *ad measuring* 2 Hectare 36 R of village Chondi, but while implementing consolidation scheme, mistake has been committed. It is the contention of the Petitioners that the Consolidation Officer, without visiting the spot, has prepared record and the Petitioners, being rustic villagers, were not aware about the preparation of the record. Therefore, by mistake names of Defendants No. 5, 4 and 1 are shown in the suit land

and by taking undue advantage of the wrong entries, the Petitioners are being tried to be dispossessed from the suit land. Therefore, due to the apprehension of dispossession, Regular Civil Suit No. 28 of 2014 has been filed seeking declaration of ownership and perpetual injunction against the Defendants. In the plaint itself, the Petitioners have made an averment regarding partition between ancestors of Petitioners and Defendants and also about carelessness of the Revenue Officers while taking entries and the entries are made by the Consolidation Officer without visiting the spot, while preparing the consolidation record.

7. There is a categorical averment in the plaint that only when the measurement was made by the Defendants, the Petitioners became aware about the actual possession of the Petitioners in gut No. 130 and the mistake committed during consolidation scheme by the Consolidation Officer, while entering name of Defendants No.5, 4 and 1 in place of Petitioners as owners of 2 Hectare 36 R land in Gut No. 130 of village Chondi.

8. After filing of the Suit, Defendants No.1 to 5 have appeared and filed their written statement denying all the contentions in the plaint. After filing of the written statement by the Defendants, issues were framed by the Trial Court at Exhibit-90

on 16th December, 2017. After framing of the issues, the Petitioners filed Application Exhibit-92 on 30th June, 2018 with a prayer to frame an additional issue regarding correctness of preparation of record during consolidation scheme in Gut No. 130 of village Chondi. The Trial Court has passed an order on Application Exhibit-92 on 20th July, 2018 by recording reasons for rejection of the application. It is observed by the Trial Court that every assertion or denial made by the party should not be an issue in the matter. Only material proposition, asserted or denied shall be matter in issue. On the basis of nature of dispute between the parties, the Court is supposed to decide the application. It is observed that the suit is for declaration of ownership and perpetual injunction and the proposed issue, which is requested to be framed, concerns with section 36 A of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1974 (to be referred to "Consolidation Act") and the record prepared by the authority under the Consolidation Act. Since section 36 A of the Consolidation Act bars jurisdiction of the Civil Court, the Court cannot frame issue, which is barred as per the Statute. Relying on Section 36 A of the Consolidation Act, the Trial Court has rejected the application Exhibit-92. Section 36 A of the Consolidation Act reads thus -

36A. [Bar of jurisdiction. [Sections 36A, 36B and 36C were inserted by Bombay 61 of 1958, Section 3(23).]

(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.

9. According to learned Advocate for the Petitioners, if in a suit, which is pending before Civil Court, issue regarding Consolidation Act arises, in such circumstances, the Civil Court can refer such issues to competent authority for determination under the Consolidation Act and after receiving decision of the concerned authority on the issue, which is referred to the competent authority, the suit is decided. Learned Advocate for the Petitioners relies on section 36 B of the Consolidation Act. According to him, case of the Petitioners is squarely covered by Section 36 B of the Consolidation Act. Section 36 B of the Consolidation Act reads thus,

36 B 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.

10, Per contra, learned Advocate for the Respondents has vehemently argued and submitted that order passed by the Trial Court is valid and a reasoned order. According to him, considering the bar to jurisdiction of the Civil Court as per the provisions of the Consolidation Act, framing of issue is not permissible. Hence, the Trial Court has passed an appropriate order. According to him, challenge to the consolidation scheme is a belated challenge. Record discloses that only after intimation to the respective parties, Mutation Entries are recorded during the consolidation scheme. According to him, Petitioners very much had knowledge about the consolidation scheme.

11. It is his contention that Consolidation Act is a comprehensive Act, which takes care of each and every contingency. Therefore, Application Exhibit-92 is not maintainable. He submits that if at all the Petitioners intend to challenge revenue entries, they can file appropriate proceedings before appropriate authority, as provided under the Consolidation Act. According to him, all the averments made in the plaint and written statement are not required to be converted in to issues. There is no straitjacket formula for framing of issues.

Therefore, it is at the discretion of the Court to frame issues from the pleadings of the parties.

12. After hearing the learned Advocates for the respective parties and going through the record, it is apparent that the Petitioners are apprehending dispossession on account of revenue entry in the name of respondents in respect of the land, which is in their possession since long. It is their specific averment in the plaint that mistake has occurred during implementation of the consolidation scheme. Though such averment is made in the plaint and it is denied by the defendants in their written statement, no issue to that effect has been framed by the Trial Court. Therefore, application Exhibit-92 was filed praying to frame the said issue. Trial Court, while deciding the application Exhibit-92, has wrongly interpreted the scope of section 36A of the Consolidation Act.

13. While doing so, the Trial Court has also failed to consider the very next provision of the Consolidation Act i.e. section 36B, which provides that Civil Court shall frame issue about consolidation scheme and refer it to the competent authority and the Civil Court is required to stay the suit till the issue which is to be determined by the competent authority is decided. The observations made by the Trial Court while rejecting the

Application Exhibit-92, are contrary to the provisions of section 36B of the Consolidation Act. Hence, the said observations are erroneous and untenable. The only reason while rejecting the application Exhibit-92 being the bar under Section 36A of the Consolidation Act, the Trial Court has got confused and misdirected itself while making the above observations, ignoring Section 36B of the Consolidation Act, which stipulates that in such case the matter is required to be referred to the Competent Authority for decision under section 36B of the Consolidation Act. Hence, the impugned order passed by the Trial Court being erroneous and passed without application of mind, deserves to be quashed and set aside.

14. In the result, Writ Petition is allowed. Impugned order dated 20th July, 2018 passed by learned Civil Judge, Junior Division, Dharmabad, District - Nanded below Exhibit-92 in Regular Civil Suit No. 28 of 2014 is quashed and set aside. Application Exhibit-92 is allowed. In view of disposal of the Writ Petition, Civil Application No. 4354 of 2023 is also disposed of.

**[MANJUSHA DESHPANDE]
JUDGE**