

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
SECOND APPEAL NO.207 OF 2018
WITH
CIVIL APPLICATION NO.530 OF 2018**

1. Sadique Abdul Rahim Saudagar
Age: 48 yrs Occup: Business
2. Tausif Sadique Saudagar,
Age: 26 yrs Occup: Business
3. Daula Sadique Saudagar
Age: 23 yrs Occup: Business
All R/o: Shaniwar Peth Solapur
4. Nijam Alimoddhin Naikwadi
Age: 27 yrs occup: Business
R/o: Begaum Peth Solapur
5. Jafar Habi Shaikh
Age: 26 yrs occup: Business
R/o: Bhagwat Chawl, Murarji Peth
Solapur

..Appellants
(Orig Defendant No 3 to 8)

Versus

1. Vishwanath Shankar Choudhari
Age: 86 yrs Occup: Agri
2. Revansiddha Shankar Choudhari
Age: 86 yrs Occup: Agri
Both R/o: Tandulwadi Taluka: South Solapur
District: Solapur
3. The state of Maharashtra
4. Smt Mahananda Sharadhananad Upase
Age: 65 yrs Occup: Household
R/o: Tandulwadi Taluka: South Solapur
District: Solapur
5. Sayyad Faizabdul Begampure
Age: 26 yrs occup: Business
R/o: Shaniwar Peth Solapur

..Respondents
(R No 1 orig plaintiffs

R. No 2, 3 & 4 Orig Defendant No.1, 2, 5 & 9)

...
Mr. Suhas Suresh Inamdar, Advocate for Appellants.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 19th NOVEMBER, 2025.

FINAL ORDER:-

1. The appellants (original defendant nos.3 to 8) impugn judgment and decree dated 20.12.2016 passed by District Judge, Solapur in Regular Civil Appeal No.49/2015, thereby upholding judgment and decree dated 10.02.2015 passed by Civil Judge Senior Division, Solapur in Regular Civil Suit No.642/2010. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent no.1/plaintiff instituted Regular Civil Suit No.642/2010 seeking relief of declaration and perpetual injunction. It is contention of plaintiff that under sale deed dated 14.09.1962, he alongwith his brother Revansiddha purchased land admeasuring 31 acres and 26 gunthas out of Survey No.87 situated at Tandulwadi. In pursuance to sale deed, mutation was effected. Thereafter, plaintiff and his brother sold 10 acres of land to Mahadev Hire and 29.36 gunthas to Mahadappa Upase. Son of Mr. Upase sold his land to defendant nos.3 to 8. The consolidation scheme was implemented at village Tandulwadi. During implementation of scheme, 6H 78R area has been mutated in name of plaintiff's brother. However, area of 5H 62R within ownership of plaintiff was deleted by mistake. On 26.07.2010, aforesaid error has been rectified by Competent Authority.

Accordingly, mutation of 2H 82R land is made in name of plaintiff from Gut No.211. According to plaintiff, area of 2H 82R owned by plaintiff is acquired by Government for expansion of Airport. The Land Acquisition Officer did not release compensation to plaintiff, since name of his brother and defendant nos.3 to 8 was only shown in mutation record prior to correction of mistake occurred in consolidation scheme. Therefore, appellants sought declaration. He is entitled for compensation towards 2H 82 R land acquired from Gut No.211.

3. The defendant no.1 filed consenting written statement, whereas defendant nos.3 to 8 have refuted plaintiff's claim. It is their contention that under registered sale deed dated 20.02.2008 they purchased 9H 67R land from Gut No.213/3 situated at Tandulwadi from Suresh Upase and Nagnath Sarde. Accordingly, their names have been mutated. They had received notice from Land Acquisition Officer. According to them, suit instituted by plaintiff is not maintainable.

4. The Trial Court framed issues based on pleading of parties, recorded evidence and finally concluded that plaintiff is entitled for compensation towards 2H 82R land acquired from Gut No.211. Aggrieved defendant no.3 to 8 filed Regular Civil Appeal No.49/2015 before District Judge, Solapur, who concurred with findings recorded by Trial Court and confirmed decree as passed by Trial Court.

5. Mr. Suhas Inamdar, learned Advocate appearing for appellants would submit that suit of plaintiff was not maintainable. The Trial Court had not framed issue as to bar of jurisdiction under Section 30 of Land Acquisition Act. Further, in light of Section 36-A of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (for short 'Consolidation Act'), Civil Court could not have entered into correctness of scheme implemented under Consolidation Act. Both Courts have erroneously accepted case of plaintiff that he was owner of 2H 82R land merely on the basis of entries in 7/12 extract.

6. Having considered submissions advanced by learned Advocate appearing for appellants, undisputedly plaintiff and his brother had purchased 31 acres 26 gunthas land from Survey No.87 under registered sale deed dated 14.09.1962. Their names were mutated in record of rights. However, during implementation of consolidation scheme, name of plaintiff's brother was continued for 6H 78R, but area within ownership of plaintiff was not carried forward in consolidation record. The aforesaid defect has been cured by order of Competent Authority dated 26.07.2010. During implementation of consolidation scheme, original Survey No.87/1 was given Gut No.211, but land of Mr. Upase was given Gut Nos.213/1 and 213/2. The defendants are owners of Gut No.213/1.

7. So far as contention of appellants that suit is barred in view of provisions of Section 36-A of Consolidation Act, District Judge has

rightly relied upon Corrigendum issued under Section 31-A of Consolidation Act, which depicts that 2H 82R land was brought on record in name of plaintiff by rectifying mistake occurred during implementation of scheme. Thus, in present case there was no issue pertaining to jurisdiction of Consolidation Officer, so as to invoke bar of jurisdiction of Civil Court. In present case, no order of Consolidation Officer was assailed or subjected to challenge. Hence, bar under Section 36-A would not attract.

8. Second objection is regarding bar of provision contained under Land Acquisition Act. The Appellate Court has dealt with aforesaid issue in paragraph nos.25 to 32. The Appellate Court has rightly observed that, in the present case, no issue arises that requires a reference to Collector. In present case, plaintiff has proved his ownership over land acquired. The plaintiff has relied upon mutation record right from 1962 and also orders passed by Competent Authority regarding rectification of mistake occurred during implementation of scheme. Apparently, Superintendent of Land Record has passed order under Section 31-A of Consolidation Act in Consolidation Appeal No.3/2007, which has attained finality. The defendant no.1, who was joint purchaser under registered sale deed dated 14.09.1962, has accepted plaintiff's title and right to receive compensation. The defendant nos.3 to 8 do not dispute ownership of plaintiff in Gut No.211, which has been acquired. They are claiming their right in land

Gut No.213/3 purchased by them under registered sale deed dated 20.02.2008.

9. In that view of matter, no substantial question of law arises for consideration in this Appeal. Hence, Second Appeal stands dismissed.

10. In view of dismissal of Second Appeal, pending Civil Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE