

Regular Civil Suit No. 246/2013.
Pandurang & others V/s. Shashikalabai & others.
CNR No : MHBI060015552013

ORDER BELOW EXH - 89.

This is the suit for declaration and injunction filed against the defendant restraining them from causing obstruction to the possession of plaintiffs. Per contra, the defendants have filed counter claim with the prayer of recovery of possession of entire land 3Acre 33R from the Gut No. 216. It is the claim of plaintiffs that plaintiffs have purchased the suit property admeasuring 2H 55R from one Manisha Vivek Dhaigude vide registered sale deed no. 569/2008 dated 14/02/2008, therefore, since the sale deed the plaintiffs are the owner and possessor of their respective shares. However, the defendants without having any nexus with the area of plaintiffs have obstructed the possession of plaintiffs therefore, the plaintiffs have filed the present suit.

2] Per contra, it is the counter claim of the defendants/counter claimants that the total area of the land in Gut no. 216 was 1H 66R belongs to the defendants/counter claimants. That they have sold 1H 34R land to the Manisha Dhaigude from whom the plaintiffs have purchased the said land. It is specific claim of the counter claimants that the sale in favour of Manisha of 1H 34R land created fragment of 32R land which remain in possession of the defendants. Therefore, the sale deed executed in favour of Manisha by the defendants/counter claimants was hit by Section 10 of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred as Act of 1947). Therefore, the sale deed executed in favour of

Manisha was itself hit by Section 9 of the Act of 1947 and thus the transfer of the land in favour of Manisha Dhaigude was itself void. Therefore, she could not have transfer the legal title in favour of the present plaintiffs.

3] Through this application, by virtue of Section 36(b) of the Act of 1947 defendants/counter claimants have prayed to refer the issue to the competent authority and stay the suit till the decision of competent authority that whether the sale deed executed in favour of Manisha Dhaigude is hit by Section 9 of the Act of 1947.

4] The Ld. Counsel for the plaintiffs strongly resisted the application contending that the area sold to the Manisha Dhaigude is admitted that the notification of the fragment and gazette in that regard is also admitted. That in the area where suit property is situated the limit of fragment for the irrigated land is 20R and non irrigated land is 40R. Therefore, in view of the sale deeds in favour of Manisha Dhaigude by the counter claimant themselves and the subsequent sale deed by Manisha Dhaigude in favour of plaintiffs. No such issue needs to be refer to the competent authority. That the counter claimants are intrigued to linger the trial.

5] Having heard the rival submissions, I am to state that no doubt there is specific bar of Section 36(b) of the Act of 1947 to the jurisdiction of this Civil Court to try the issues with required to be settled, decided or dealt with by the competent authority under the Chapter 5 of the Act of 1947. However, the case in hand is such that

the limit of fragmentation, the gazette in that regard, and the area in the sale deeds are not disputed. It is also not disputed that the sale deeds have been executed during the enforcement of the gazette of prevention of fragment which limits the transfer or partition of irrigated land up to the 20R and non irrigated land up to 40R. It is also not disputed that the defendants/counter claimants have themselves executed the sale deed in favour of Manisha Dhaigude who is not party in this suit. It is also not disputed that after the sale of the suit property in favour of Manisha Dhaigude by the defendants/counter claimants the piece of 32R land is remained in possession of counter claimants.

6] Indeed, in view of such admitted facts and the position of the suit and the counter claim in hand that where everything is admitted by the parties that the fact only remained to be adjudicated that whether the transfer by counter claimants in favour of Manisha Dhaigude is void being hit by Section 9 of the Act of 1947 which in my view requires exclusive judicial findings. The competent authority has nothing to do in this suit.

7] Further, I based my view in the light of settled law laid by the Hon'ble Parent High Court in case of ***Ek Nath Daval Thete V/s. Ganpat Dagadu Thete, 2016 (3) Mh.L.J. 735*** wherein the Hon'ble Parent High Court was pleased to rule that it is always not necessary to refer the question to the competent authority when the Court can decide the issue itself when the area involved in the suit and the fragment and its notification in gazette are admitted. Therefore, the prayer for making reference in such circumstances needs to be turned down.

8] Resultantly, in view of the admitted facts by the parties about the transfer of area by the sale deeds and the gazette notification of the fragment of the land in the area where the suit property is situated I do not find any justifiable reason to refer the issue to the competent authority under Chapter 5 of the Act of 1947. Specifically, when the vendor of plaintiffs and the purchaser of defendants/counter claimants land said Manisha Dhaigude is not made party to the counter claim. Hence, I have reasons to believe that referring the issue to the competent authority will unnecessarily cause delay in the trial. Hence, I reckon to pass following order;

:: ORDER ::

01. Application is rejected with costs of ₹ 500/-.
02. Defendants/counter claimants to lead the evidence without fail to prove their burden vide Issue No.4 settled at Exh. 36 rather the Court shall proceed without their evidence.

Place : Ambajogai.
Date : 11/01/2024.

Sd/-
(Z. Z. Khan)
Jt. Civil Judge (Junior Division),
Ambajogai (MHBI06-2196)

:: Certificate of Stenographer ::

“I affirm that the contents of this PDF file are word to word as per original Judgment.”

Dictated On : 11/01/2024.

Transcribed On : 11/01/2024.

Checked & Signed On : 11/01/2024.

Date : 11/01/2024.

Place : Ambajogai.

Sd/-
(Akash Kabne)
Stenographer (Grade – 3)
Jt. C.J.J.D. & J.M.F.C., Ambajogai.