

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7186_ OF 2010
(Arising out of SLP(C) NO. 15152 OF 2007)

Sushila Pralhad Jagdale and another

...Appellant (s)

Versus

Umabai Shankar Nimbalkar and others

...Respondent(s)

O R D E R

Leave granted.

Whether civil court can directly or indirectly nullify the consolidation scheme framed under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short, 'the Act') is the only question which arises for determination in this appeal filed against the judgment of the learned Single Judge of the Bombay High Court, who dismissed the second appeal preferred by the appellants against the judgment and decree dated 7.2.2000 of II Additional District Judge, Pandharpur (hereinafter referred to as 'the lower appellate Court').

The appellants' predecessors-in-title purchased three different properties bearing survey Nos. 302, 303 and 304 situated at Ropale Taluka and District Pandharpur from the predecessors-in-title of the respondents. Out of the total 24 acres land comprised in survey No.304, the appellants' predecessors-in-title had purchased 2 acres. In 1968, consolidation proceedings were held for Village Ropale and the predecessors-in-title of the appellants were allotted revised Gat No. 238 consolidating all the three survey numbers including survey No.304.

After 21 years of the finalization of the consolidation proceedings in terms of Chapter III of the Act, the appellants filed suit for perpetual injunction by alleging that the respondents were trying to interfere with their possession. By judgment dated 1.9.1995, Civil Judge (Junior Division),

Pandharpur (hereinafter referred to as 'the trial Court') decreed the suit and restrained the respondents from obstructing the appellants' possession and enjoyment of the suit property.

The respondents challenged the judgment and decree of the trial Court in Civil Appeal No. 107/1995, which was allowed by the lower appellate Court vide its judgment dated 7.2.2000. The

lower appellate Court referred to the evidence produced by the parties and held that the plaintiffs-appellants were wrongly shown as owners of Gat No. 238. It further held that even

though the defendants-respondents had not challenged the wrong and incorrect record of the consolidation in respect of the suit land, the plaintiffs-appellants will not get title of the same.

On that premise, the lower appellate Court partly allowed the appeal of the defendants-respondents and modified the judgment and decree of the trial Court and restrained them from obstructing possession of the appellants only to the extent of 1 H.04 R area of the suit land i.e., Gat No. 238.

The second appeal preferred by the appellants was dismissed by the learned Single Judge of the High Court by observing that no substantial question of law is involved therein. The learned Single Judge reiterated the findings recorded by the lower appellate Court in the following words:

"While noting down that the land purchased by Janabai was not in excess of 1 H. 4 ares from these old survey numbers the trial court referred to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and held that by way of consolidation order the plaintiffs were entitled for an injunction in respect of total land in Gat No.238, though in excess of 1 H. ares. The defendants had, therefore, filed Civil Appeal No. 107 of 1995, which came to be partly allowed by the learned IIInd Additional District Judge at Pandharpur vide his judgment and order dated 7/2/2000. The Lower Appellate Court while noting down the fact that from the old Survey Nos.302, 303 and 304 Janabai had purchased a total of 1 H. 4 ares land from Shankar on 15/6/1964, she could not be held to be owner of the total land in the consolidated Gat No. 238. There is no dispute between the parties that the land in Gat No.238 admeasured 1 H. and 28 ares. The plaintiff did not place on record a copy of the sale deed in respect of the land admeasuring 2 acres from Survey No.304 and in the absence of the same document coming on record the demarcation of the remaining land from Survey No.304 could not be identified. At the same time,

it is not disputed by the plaintiffs that the balance of 24 ares land located in old Survey No.304 was not purchased by Janabai from Shankar at any time. The Lower Appellate Court, therefore, rightly referred to the Court Commissioner's report at Exh.33 and the map furnished along with the said report. The disputed land admeasuring 24 ares in the old Survey No.304 was situated on the West side and it was quite independent and separate and, therefore, it could not be treated to be the part of the holdings of the plaintiffs. Therefore, the Lower Appellate Court recorded a finding that the remaining 24 ares land in Gat No.238 could not be held to be part of the plaintiffs holdings though there was a consolidation of all the lands in terms of Gat No.238 and the ownership of this 24 ares land had remained with Shankar Nimbalkar, the predecessor of the defendants. This view taken by the Lower Appellate Court so as to modify the decree of the trial Court cannot be termed as illegal or perverse. It is obvious that by filing a suit the plaintiffs were trying to become the owners of the remaining 24 ares of the land which, in fact, was never in their ownership. The Lower Appellate Court rightly stepped in to correct the mistake committed by the trial Court."

We have heard learned counsel for the parties and perused the record. Sections 36A and 36B of the Act which have bearing on this case read as under:

36A. Bar of jurisdiction. - (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.

36B. 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.

A reading of the above reproduced provisions makes it clear that the Civil Court does not have the jurisdiction to settle, decide or deal with any question which is by or under the Act required to be settled, decided or dealt with by the State Government or any officer or authority. If any suit instituted in any Civil Court or Mamlatdar's Court involves an issue which needs to be settled, decided or dealt with by any authority under the Act then the Civil Court or Mamlatdar's Court is required to stay the suit and refer such issue to the competent authority for determination.

The bar created in Section 36A to the Civil Court's jurisdiction to settle, decide or deal with question, which is required to be settled, dealt with or decided under the Act is absolute. It appears that attention of the lower appellate Court and the High Court was not drawn to the provisions of Section 36A and this is the reason why they ventured into the forbidden field and decided that consolidation proceedings conducted in 1968 were not legal and no right was created in favour of the appellants on the basis of such proceedings in respect of a portion of the suit land.

In view of the plain language of Section 36A, it is not possible to approve the approach adopted by the lower appellate Court and the High Court in pronouncing upon the legality of the consolidation proceedings because the respondents had not questioned the consolidation proceedings by availing appropriate remedy under the Act.

In the result, the appeal is allowed, the impugned judgment as also the one passed by II Additional District Judge, Pandharpur are set aside and the decree passed by the trial Court is restored. It is, however, made clear that the respondents shall be free to avail appropriate legal remedy for correction of entries recorded during the consolidation proceedings. They shall also be free to file application for condonation of delay.

In case, such an application is filed, the concerned court/authority shall decide the same in accordance with law.

...J.

.....
[G.S. Singhvi]

.....J.
[Asok Kumar Ganguly]

New Delhi
August 26, 2010
ITEM NO.35

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).15152/2007

(From the judgement and order dated 21/03/2007 in
of The HIGH COURT OF BOMBAY)

SA No. 299/2000

SUSHILA PRALHAD JAGDALE & ANR.
VERSUS

Petitioner(s)

UMABAI SHANKAR NIMBALKAR & ORS.

Respondent(s)

(With prayer for interim relief)

Date: 26/08/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr.Vinay Navare, Adv.
Ms. Abha R. Sharma,Adv.

For Respondent(s) Mr.Nitin Kumar Gupta, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)