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Court : Mumbai Aurangabad

Decided On : Aug-05-2013

Judge : S.S. Shinde

Appeal No. : Civil Revision Application No.153 of 2012

Appellant : Rajalya and Another

Respondent : Putabai

Judgement :

Oral Judgment:

Rule. Rule made returnable forthwith. With consent of the parties heard finally.

2. This Civil Revision Application takes exception to the order dated 9th February, 2012 below Exhibit-77 in Regular Civil Suit No.32 of 2007 passed by the 2nd Joint Civil Judge, Junior Division, Chopda.

3. It is the case of the revision applicants that, the respondent herein, i.e. plaintiff filed suit for permanent injunction and declaration with respect to the agricultural land bearing Gat No.6 at Malapur, Tq. Chopda, District Jalgaon contending that, the husband of the plaintiff, Maharu Kalaji Pavra has paid six times of the land revenue to the Government and therefore, the suit land is given to the plaintiff for cultivation. By order NO.LNDWS/1592 dated 31-10-1967, name of the plaintiff's husband is entered in revenue record as owner and possessor of the land by Entry

No.2619 at Tahsil office. The husband of the plaintiff died in the year 1981 and thereafter, the plaintiff is cultivating the land as Karta of the family. The plaintiff further alleged that, on 4th June, 2007, when the plaintiff was about to plough the land, the defendant Nos.1 and 2 entered in to the suit land and obstructed the peaceful possession of the plaintiff. Therefore, the plaintiff filed suit for declaration and injunction.

The applicants herein,i.e. defendants appeared in the suit and resisted the suit and submitted that, there is an error in the consolidation scheme with respect to the suit land and matter is pending regarding correction of the scheme before Deputy Director of Land Records, Nashik Division, Nashik. The defendants filed application below Exhibit-77 contending that, in view of the pendency of the proceedings before the Deputy Director of Land Records, Nashik Division, Nashik, the Court should frame preliminary issue about jurisdiction and said issue may be decided and thereafter, the Court should proceed to decide the suit. Accordingly, by order dated 3rd September, 2011 the trial Court framed the preliminary issue and after hearing the parties, 2nd Joint Civil Judge, Junior Division, Chopda, rejected the prayer of the applicants that, the concerned Court has no jurisdiction to entertain the suit. Hence, this Civil Revision Application.

4. The learned Counsel appearing for the revision applicants invited my attention to the grounds taken in the Civil Revision Application and contents of the application at Exhibit-77 and also averments in the plaint and prayers therein and submits that, Civil Court should have held that, the Court has no jurisdiction to entertain the suit in view of pendency of the proceedings before the Deputy Director of Land Record, Nashik Region, Nashik. He submits that, in view of provisions of Section 36A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the Civil Court has no jurisdiction to decide the suit and therefore, said proceedings ought not to have been entertained by the Civil Court. It is submitted that, civil court has passed two orders on the same application. On 3rd September, 2011 Civil Court has allowed the application and same application is rejected on 9th February, 2012. Therefore, the Counsel for the applicants submits that, Civil Court has exceeded the jurisdiction thereby passing two orders contradictory to each other on the same application. Therefore, he

submits that, Civil Revision Application deserves to be allowed.

5. On the other hand, the learned Counsel appearing for the respondent herein, i.e. original plaintiff relying upon the pleadings in the plaint submits that, whether the concerned Court has jurisdiction to entertain the suit or not, can be decided on the basis of pleadings in the plaint and not on the basis of what written statement or defence is taken by the defendants in the suit. The Counsel appearing for the original plaintiff invited my attention to the averments in the plaint and prayers therein and submits that, prayer in the suit is not only for injunction but even for declaration and by any stretch of imagination, prayer for declaration cannot be adjudicated by authority under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Therefore, he submits that, Civil Revision Application is devoid of any merits. He further submits that, nothing was placed on record by the applicants herein i.e. original defendants on record so as to believe the contention of the defendants that, proceedings are pending before the Deputy Director of Land Record, Nashik Division, Nashik. Therefore, the Counsel appearing for the respondent-original plaintiff submits that, Civil Revision Application is devoid of any merits and same may be rejected.

6. The learned A.G.P. appearing for the State on written instructions submits that, the proceeding about Forest Plot No.19 consisting 8 acre 7 guntha from Survey No.378 (New Sr. No.462) and old Gat No.413 is pending before the Deputy Director of Land Record, Nashik Division, Nashik. In short, submission of the learned A.G.P. is that, dispute in respect of the suit property is pending before the Deputy Director of Land Record, Nashik Division, Nashik.

7. I have heard the learned Counsel appearing for the parties, with their able assistance perused the entire material placed on record and in particular pleadings/averments in the plaint and also prayers therein. The original plaintiff has prayed two-fold reliefs in the plaint as it is evident from the prayers in the plaint, firstly for injunction and secondly for declaration in respect of the suit property.

8. The concerned Court has considered the pleadings in the plaint and rival submissions and accepted the prayer of the applicants and framed preliminary

issue about jurisdiction of the Civil Court and after framing such preliminary issue, the application below Exhibit-77 is rejected holding that, the Civil Court has jurisdiction to try the suit.

9. The arguments of the Counsel appearing for the applicants that, the application below Exhibit-77 was allowed by order dated 3rd September, 2011 and rejected on 9th February, 2012 and thereby the Civil Court has exceeded jurisdiction, is devoid of any merits. There cannot be two orders on the said application. It appears that, while passing the order on 3rd September, 2011 the Court has observed that, the application is allowed. However, upon perusal of entire discussion in the order dated 3rd September, 2011 the trial Court has passed order for framing preliminary issue of jurisdiction to try the suit. After framing such preliminary issue, the civil Court perused the material placed on record and after hearing the parties, rejected the application below Exhibit-7.

10. While passing the impugned order, the Court has observed that, pleadings/averments in the suit have to be considered while considering the preliminary issue of jurisdiction. The Court has considered the provisions of Section 36A in paragraph-9 of the impugned order and also judgment of the Supreme Court in the case of Abdulla Bin Ali vs. Galappa reported in AIR 1985 SC 577 and other judgments and held that, Civil Court has jurisdiction to entertain the suit.

11. The contention of the applicants that, Civil Court's jurisdiction is ousted in view of the provisions of Section 36A of the said Act is correct only in respect of subject matter pending before the Deputy Director of Land Record. Bar contained in Section 36A of the said Act is to the effect that, Mamlatdar Court or Civil Court have no jurisdiction to settle, decide or deal with any question which is by or under the said Act requires to be settled, decided or dealt with by the State Government or any officer or authority or if any order is passed by the appropriate authority under the said Act, cannot be questioned before the Civil Court. However, in the facts of the present case, there is a prayer for declaration by the respondent-plaintiff which can only be adjudicated and relief can be granted by the Civil Court. It is true that, Civil Court is bound to consider the effect of pending proceedings if

the subject matter i.e. land involved in the proceedings before the Civil Court and before the Deputy Director of Land Record, Nashik Division, Nashik is one and the same. The Civil Court can defer hearing of the suit till outcome of the proceedings which are pending before appropriate authority under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and after considering decision in those proceedings, the Civil Court can proceed further to adjudicate the prayer for declaration. However, at prima facie stage, the Civil Court is right in holding that, the Court has jurisdiction to entertain the suit.

12. In the facts of the present case, the applicants-defendants will be at liberty to place on record the relevant and sufficient material/documents in respect of pending proceedings before the Deputy Director of Land Record, Nashik Division, Nashik, before the civil court, and if such material is placed on record alongwith the application, the civil court must consider the effect of the said proceedings before the revenue authorities if the subject matter of the suit and the said pending proceedings is one and the same. While considering such material and prayer of the applicants i.e. original defendants, the concerned Court will certainly afford opportunity to the plaintiff to put forth his contention. However, Civil Revision Application which is against the order of the Civil Court thereby holding that, the Court has jurisdiction to try suit, deserves no further consideration, hence same stands rejected. Rule stands discharged.

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