

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.517 OF 2014
WITH
SECOND APPEAL NO.630 OF 2014
ALONGWITH
CIVIL APPLICATION NO.370 OF 2015
IN
SECOND APPEAL NO.630 OF 2014**

1. Shri Dattu Jairam Sanap
Age 38 years, occ. Agricultural
R/o Ranewadi, Tal. Nandgaon
Dist. Nasik
2. Shri Ashok Mhadu Katkade
Age 44 years, occ. Agricultural
R/o. Panewadi, Tal. Nandgaon
Dist. Nashik
3. Shri Chagan Mhadu Katkade
Age 38 years, occ. Agricultural
R/o. Panwadi, Tal. Nandgaon
Dist. Nasik

.. Appellants.
(Org. Plaintiffs)

V/s

Smt. Sakubai Rambhau Bachkar
Age 60 years, occ. Agriculture
R/o. At Ekwai, Tal. Nandgaon,
Dist. Nasik.

Mr. Anilkumar Patil, for Appellants.

Coram : Smt. R.P SondurBaldota, J.

Date : 03rd March, 2015

P.C.

1. This a common order, on above two appeals directed against the concurrent findings of the Courts below, in dismissing the suit filed by the appellants and allowing the counter claim of the respondent.

2. The appellants had filed Regular Civil Suit No.82 of 2001 claiming declaration that they are the owners in respect of the suit property and that they are in possession thereof. They sought perpetual injunction to restrain the respondent from disturbing their possession. The respondent on the other hand, filed the counter claim contending that a portion of the suit land amdeasuring 59 R is in his possession and infact could not have been sold in view of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. It was contended by him that sale deeds relied upon by the appellants are not legal and valid in the eyes of law, since the same were executed in contravention and violation of provisions of the Bombay Prevention of Fragmentation

and Consolidation of Holdings Act, 1947. The Trial Court on the basis of evidence on record held that appellants have failed to establish that they are the owners and in possession of the suit land and as such not entitled for the relief of declaration and injunction. It further held that respondent has established that land admeasuring 59 R out of Gat No.30 is in her possession and hence restrained the appellants from obstructing with her possession.

3. Undisputedly, the entire case hinges on the bar under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. If the transfer of properties creates fragment, the sale would be in violation of the provisions of the Act. The Treasurer, Tahsildar Karyalay, Nandgaon has been examined for the purpose of establishing the size of the fragment in the location of the suit property. The witness stated that for the purpose of Nandgaon Tahsil area less than 80 R is a fragment for non-irrigated land. For the purpose of irrigated land an area less than 20 R is fragment. Undisputedly after the sale in favour of the appellants, the land remaining with the respondent would be about 61 R, which is within the ambit of fragment envisaged by the Bombay Prevention of Fragmentation and Consolidation of Holdings Act,

1947. This evidence of the concerned officer cannot be disputed. Therefore, the findings of the Trial Court are correct and supported by the material on record. In these circumstances, there is no infirmity in the impugned orders. There is no substantial question of law arising in these appeals for the consideration of this Court. Hence, appeals are dismissed.

4. In view of dismissal of Second Appeals, the Civil Application does not survive and the same is disposed of.

(Smt. R.P. SondurBaldota, J.)