

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 4367 OF 2011**

Digamber Govind Gadhe (Wadhe)  
(Since Deceased) Through L.Rs.

1-a) Dnyaneshwar Digamber Gadhe (Wadhe)  
Age: 50 years, Occu.: Agri.,  
R/o Lasur Station, Tq. Gangapur,  
Dist. Aurangabad.

1-b) Sopan Digamber Gadhe (Wadhe)  
Age: 45 years, Occu.: Agr.,  
R/o Lasur Station, Tq. Gangapur,  
Dist. Aurangabad.

1-c) Samindrabai Digamber Gadhe (Wadhe)  
Age: 80 years, Occu.: Agri.,  
R/o Lasur Station, Tq. Gangapur,  
Dist. Aurangabad.

1-d) Mankarnikabai Ramdas Jadhav  
Age: 55 years, Occu.: Agri.,  
R/o Khirdi, Tq. Khultabad,  
Dist. Aurangabad.

..PETITIONERS

VERSUS

Raibhan Bhagaji Wadhe (Khumbhar)  
(Since Deceased) Through L.Rs.

1-a) Gangubai Murlidhar Kale  
Age: Major, Occu.: Household,  
R/o Balhegaon, Tq. Vaijapur,  
Dist. Aurangabad.

- 1-b) Yamunabai Ramesh Wakchaure,  
Age: Major, Occu.: Household,  
R/o Undirgaon, Tq. Srirampur,  
Dist. Ahmednagar.
- 1-c) Indubai Madhukar Jordikar  
Age: Major, Occu.: Household,  
R/o Jorkathgaon, Tq. Sangamner,  
Dist. Ahmednagar.
- 2) Shankar Raibhan Wadhe  
Age: Major, Occu.: Agri.,  
R/o Ramwadi, Tq. Kopargaon,  
Dist. Ahmednagar.
- 3) Bhimraj Raibhan Wadhe  
Age: Major, Occu.: Agri.,  
R/o Ramwadi, Tq. Kopergaon,  
Dist. Ahmednagar.
- 4) Sanjay Raibhan Wadhe  
Age: Major, Occu.: Agri.,  
R/o Ladgaon, Tq. Vaijapur,  
Dist. Aurangabad.
- 5) Ramrao Bhagaji Wadhe (Kumbhar)  
Age: 70 years, Occu.: Agri.,  
R/o Ladgaon, Tq. Vaijapur,  
Dist. Aurangabad.

..RESPONDENTS

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Mr. S.P. Tiwari, Advocate holding for Mr. S.J. Gayke, Advocate for petitioners.

Respondent No.1A is served.

Mr. R.L. Kute, Advocate holding for Mr. V.R. Dhorde, Advocate for Respondent Nos.1B, 1C, 2 to 5.

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**CORAM : RAVINDRA V. GHUGE, J.**  
**DATED : 7<sup>th</sup> MARCH, 2016**

**ORAL JUDGMENT:**

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioners are the original plaintiffs in R.C.S. No. 382/1997. The same was filed for seeking declaration and injunction against the respondents who are defendants.
3. The scheme of fragmentation and consolidation with regard to the suit property was brought into effect in 1969-70 by which Gut No. 109/2 was allotted a new Gut No. 217 in village Ladgaon, Tq. Vaijapur, Dist. Aurangabad. The grievance of the petitioner is that his share of land has been reduced. The suit property admeasures 7 acres 37 R.
4. After the entire recording of oral and documentary evidence was completed, the application Exhibit 144 was filed by

the defendant praying for referring the matter to the District Superintendent of Land Records, Aurangabad for deciding the issue which would fall under Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The grievance of the petitioner is that the said application should not have been entertained since the Trial Court was competent to decide the same looking to the fact that the first and the third prayer made in the suit was squarely within the realm of the civil suit. The prayers for declaration and perpetual injunction therefore cannot rest upon reopening the scheme of fragmentation and consolidation. The petitioner also relies upon the judgment of this Court in the matter of *Prabhakar Kushaba Hagwane and Others Vs. Yashwant Bhau Hagwane*, 1994(1) BCR 368.

5. Mr. Kute, learned Counsel for the respondents specifically draws my attention to the ad-interim order passed by this Court on 01.12.2011, especially paragraph no.3 which reads as under:

“3) Till then, ad interim relief in terms of prayer clause (C). However, it is made clear that, in case the

*impugned order dated 24.11.2010 is already acted upon, there cannot be any stay to the said order.”*

6. He therefore submits that the impugned order has been passed on 24.11.2010. The District Superintendent of Land Records complied with the impugned order of the Trial Court and has arrived at a conclusion on 21.10.2011. The petitioner filed this petition on 06.05.2011 and circulated the matter for the first time on 01.12.2011.

7. Mr. Kute therefore submits that this Court, while granting interim relief to the petitioner and while issuing notice, observed that if the impugned order dated 24.11.2010 was already acted upon, there shall be no relief to the petitioner.

8. I have considered the submissions of the learned Counsels.

9. I also find that the issue as to whether the scheme of fragmentation and consolidation, after having been brought into

effect, could be questioned or reopened after the limitation period of three years has over, needs to be dealt with.

10. I am therefore of the view that ends of justice would be met by disposing off this petition and directing the Trial Court to decide R.C.S. No. 302/1997 by considering the decision of the D.S.L.R. Dated 21.10.2011, as well as, the issue of limitation with regard to the challenge to the scheme of fragmentation and consolidation. The litigating sides would be at liberty to address the mind of the Trial Court on all issues.

11. This petition is therefore disposed off with the directions set out in the forgoing Paragraph No.10. Rule is discharged.

**(RAVINDRA V. GHUGE, J.)**