

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

WRIT PETITION NO. 9767 OF 2015

Hanumant Vasant Gaikwad and others ...Petitioners

Versus

Madhav Daulat Gaikwad and others ...Respondents

.....
Mr. Vijay B. Patil, Advocate for petitioners
Mr. Vinod P. Patil, Advocate for respondents
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 1st APRIL, 2016

ORDER :

1. Heard learned counsel for the parties.
2. The request of petitioners-original defendants No. 1 to 4 and 9 under application (Exhibit-62) in Regular Civil Suit No.68 of 2013, to frame issue with regard to tenability of the suit for partition and separate possession since alienation or sub-division of suit property is not permissible without prior sanction by District Collector or Divisional Commissioner having regard to Section 31 of the Bombay Prevention of

Fragmentation and Consolidation of Holdings Act, 1947 ("The Act"), and that District Collector is a necessary party, as preliminary, has been rejected by learned Civil Judge, Junior Division, Chopda by order dated 30th July, 2015 and as such, they are before this court.

3. The trial court, after considering factual aspects before it, held that although, ostensibly, Section 31 of the Fragmentation Act, puts restrictions on fragmentation, however, having regard to that the land prima facie appears to have been granted in favour of father of parties who died in 1970, by virtue of section 8 of the Hindu Succession Act, the parties may seek partition of the same.

4. As such, validity of partition/alienation at such a primary stage may not arise, the *lis* and operation of decision would be subject to provisions of the relevant laws. The court, therefore has declined the request.

5. The learned counsel Mr. Vinod Patil, appearing for respondents states that since the defendants accept the plaintiff being in possession of the property, there is no substance in the application.

6. Having regard to aforesaid, it does not appear to be a case wherein exercise of discretion is required in favour of petitioners. Writ petition, as such, stands rejected.

(SUNIL P. DESHMUKH, J.)

sms