

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 10649 OF 2015

1. Babasaheb @ Balu s/o. Kondiram Dhage,
Age 35 years, Occu. Agri.,

2. Chandrakant s/o. Kondiram Dhage,
Age 38 years, Occu. Agri.,

Both R/o. Warkhed, Tal. Gangapur,
Dist. Aurangabad.

...Petitioners.

Versus

1. Nandakishor s/o. Dadasaheb Dhage,
Age 28 years, Occu. Agri.,

2. Bhaskar s/o. Dadasaheb Dhage,
Age 25 years, Occu. Agri.,

Both R/o. Warkhed, Tal. Gangapur,
Dist. Aurangabad.

....Respondent.

...
Mr. H.D. Deshmukh, Advocate for petitioners.
Mr. D.Y. Nandekar, Advocate for respondent Nos. 1 and 2.
...

CORAM : T.V. NALAWADE, J.
DATED : 1st October, 2016.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2. The petition is filed to challenge the order made on

26.6.2015 by the learned Civil Judge, Junior Division, Gangapur by which the Trial Court has held that the suit itself is not tenable, it is barred by the provision of Prevention of Fragmentation and Consolidation of Holdings Act and on that ground, the plaint is rejected.

3. This Court has gone through the prayers made in the plaint. The main prayer is as under :-

“Give direction to the office of Land Record to take measurement of the lands of plaintiffs and defendants as per the revenue record like 7/12 extract and demarket boundaries and fix the boundaries.”

4. The learned counsel for petitioners placed reliance on the case reported as **AIR 1987 SC 2137 [E. Achuthan Nair Vs. P. Narayanan Nair]**. The Apex Court has made it clear that such suit is tenable. It is held that in view of the provision of section 4 of C.P.C., if there is uncertainty about the boundary, the appointment of Court Commissioner, T.I.L.R. is proper and boundary marks can be fixed in such suit of civil nature. In view of this position of law, this Court holds that the Trial Court has committed error.

5. In the result, the petition is allowed. The order of the Trial Court is hereby set aside. The matter is restored. The Trial Court is to proceed ahead with the matter. Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

SSC/