

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

Writ Petition No. 2743 of 2015

- 1) Raghunath s/o Gyanoba Kadam,
Age 89 years,
Occupation: Agriculture.
R/o Kasar Shirsi, Taluka Nilanga,
District Latur.
- 2) Seemabai s/o Raghunath Kadam,
Age 67 years,
Occupation: Household,
R/o Kasar Shirsi, Taluka Nilanga,
District Latur. **.. Petitioners.**

Versus

- 1) Ashok s/o Vishwambar Trimukhe,
Age 43 years,
Occupation: Business,
R/o Harijawalga,
Taluka Nilanga, District Latur.
- 2) Suresh s/o Vishwambar Trimukhe,
Age 39 years,
Occupation: Business,
R/o Harijawalga,
Taluka Nilanga, District Latur. **.. Respondents.**

Smt. Madhaveshwari D. Thube-Mhase, Advocate, for
petitioners.

Shri. S.P. Shah, Advocate, for respondent Nos.1 and 2.

CORAM: T.V. NALAWADE, J.

DATE : 30 SEPTEMBER 2016

JUDGMENT:

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

2) The petition is filed to challenge the order made on Exhibit 86 in Regular Civil Suit No.77/2012 presently pending in the Court of the Civil Judge, Senior Division, Nilanga. The application filed by present petitioners to refer one issue to the authority created under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, is rejected by the trial Court.

3) The plaintiff, vendor is challenging one transaction of sale of 1 R portion of land Gat No.20/K having area of 94 R. It is the case of the plaintiff that selling of 1 R portion which is described with boundaries amounts to creation of fragment and this is prevented by the provision of section 8 of the Act and the transaction was void in view of provision of section 9 of the Act. In view of provision of section 36-B of the Act plaintiff had

prayed for referring this point to the authority to take decision on this point. On this point, learned counsel for the petitioners placed reliance on a case of the Apex Court reported as **(2000)9 SCC 189 (Gangabhisban v. Motiram)**. This Court has carefully gone through the copy of sale deed which was supplied by the original defendants. The land shown to be sold is part of Sy.No.20/K and it is described by giving boundaries and it is clear that 1 R is separated from the remaining portion of the aforesaid survey number. Provisions of sections 8 and 9 of the Act show that there is prohibition to create fragment. Whether 1R portion sold amounts to fragment, whether the transaction was hit by provision of section 9 of this Act, need to be decided by the authority created and for that Civil Court is bound to refer the matter to the authority under section 36-B of the same Act.

4) In the present matter, on one hand the Civil Court has held that the issue whether the transaction is hit by provision of aforesaid Act, is not involved in the matter and on the other hand it is held that there is no need to refer the said point to the authority. Necessity of

framing of the issue needs to be on the basis of rival pleadings and the pleadings are already quoted. Relevant portion of the sale deed is also mentioned. Thus there was case made out for referring the matter to the authority. This Court holds that the trial Court has committed serious error in rejecting the application filed at Exhibit 86.

5) In the result, the order made by the learned Judge of the trial Court is hereby set aside. The application at Exhibit 86 is hereby allowed. Rule is made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)

rsl