

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

- 1. WRIT PETITION NO.5835 OF 2014
WITH
2. WRIT PETITION NO.5836 OF 2014
WITH
3. WRIT PETITION NO.5837 OF 2014
WITH
4. WRIT PETITION NO.5838 OF 2014**

Chandrashekhar Sadashiv Karkhanis
Vs

Petitioner

Shri Sourabh Nandkumar Bhele
and Anr.

.. Respondents

Ms. Bhavika S. Kuperkar i/b A.V.Chatuphale, Advocate for
Petitioner.

Ms. Lalita H. Panchakshari, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 15/02/2016

PC:

1. Heard Ms. Bhavika Kuperkar, learned counsel for the petitioner and Ms. Lalita Panchakshari, learned counsel for respondent no.1 in all the petitions at length.

2. These petitions challenge orders dated 22.1.2014 passed by the learned Jt. Civil Judge, Jr. Dn., Pune in applications filed by the petitioner for referring issue "whether the suit property is fragment or not?, to the authority under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act,1947 (for short, 'Act'). By these orders, the learned trial judge rejected the applications. As the common questions of law and fact arise in these petitions, facts from Writ Petition No.5835 of 2014 are

taken into consideration in a representative capacity.

3. Respondent, hereinafter referred to as 'plaintiff', has instituted suits, inter-alia, praying for declaration that the plaintiff has right of pre-emption to purchase the suit property, more particularly described in para 1 of the plaint; for declaration that the sale deed dated 19.5.2007 executed by defendant no.2 in favour of defendant no.1 is illegal, null and void; for mandatory injunction directing defendant no.2 to execute sale deed in favour of the plaintiff for the apparent consideration of Rs.64,000/-; for perpetual injunction restraining defendant from creating third party interest.

4. Defendant no.1 filed application under section 9-A of C.P.C. for deciding the question whether the civil court has jurisdiction to entertain and try the suits. Defendant no.1. contended that the issue whether the suit property is fragment or not, can only be decided by the competent authority under the Act. Defendant no.1 has, therefore, prayed for stay of suits till decision on this issue from the competent authority is received.

5. In support of these petitions, Ms Kuperkar strenuously contended that under section 36A of the Act, no Civil Court or Mamlatdar's Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority. Section 36B lays down that if any suit

instituted in any civil court or Mamlatdar's court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under the Act (for short, 'competent authority'), the Civil Court or Mamlatdar's Court has to stay the suit and refer such issues to such competent authority for determination.

6. Ms. Kuperkar submitted that the property in writ petition no.5385 of 2014 is approximately 20 Ares and the issue as to whether this property is fragment or not, can be decided by the competent authority under the Act. The suit therefore has to be stayed and the issue has to be referred to the competent authority for decision. Till such time decision is received, proceedings in the civil court are required to be stayed. She, therefore, submits that the impugned orders deserve to be set aside thereby referring the issue to the competent authority to decide as to whether the suit property is fragment or not.

7. On the other hand Ms. Panchakshari supported the impugned order. She submitted that the application is wholly misconceived and the plaintiff is not disputing that the suit property is fragment. On the contrary, the plaintiff has instituted suits claiming right of preemption to purchase suit property as it is fragment and he is adjacent land holder.

8. I have considered the rival submissions advanced the learned counsel appearing for the parties. I have also perused

the material on record. The moot question whether the suit property is fragment or not, is required to be referred to the competent authority under the provisions of the Act. Sections 36A and 36B read thus:

“36A. (1) No Civil Court or Mamlatdars Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority.

(2) No order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdars Court.

36B. (1) If any suit instituted in any Civil Court or Mamlatdar's Court involves any issues which are required to be settled, decide or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the 'competent authority') the Civil Court or Mamlatdar's Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court or Mamlatdar's Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court or Mamlatdar's Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.”

9. In the present case, the plaintiff is not disputing that the suit property is fragment. On the other hand, he is claiming right of preemption to purchase suit property which is fragment being adjacent under Section 7 of the Act which reads thus:

“7. (1) No person shall transfer any fragment in respect of which a notice has been given under sub-section (2) of section 6 except to the owner of a contiguous survey number or recognised sub-division of a survey number.

Provided that the holder of such fragment may mortgage or transfer it to the State Government or a land mortgage bank or any other co-operative society as security for any loan advanced to him by the State Government or such bank or society, as the case may be.

(2) Notwithstanding anything contained in any law for the time being in force or in any instrument or agreement no such fragment shall be leased to any person other than a person cultivating any land which is contiguous to the fragment."

10. Perusal of the impugned order shows that the learned trial Judge referred to Gazette Notification published by the Government of Maharashtra for Village Andale, Tal.Mulshi, District Pune, wherein for minimum area for dry crops fragment is one Acre and for irrigated land it is ten Guntha. In other words, the learned trial Judge was of the view that area of land to be treated as fragment is already declared by the State Government. That part, in the present case the plaintiff is not disputing that the suit property is fragment. In view thereof the issue whether the suit property is fragment or not is not disputed question for referring the same to the competent authority.

11. For all these reasons, I do not find that any case is made out for interfering with the impugned order. Hence, Petitions fail and the same are dismissed.

(R.G.KETKAR, J.)