

*JPP*

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

*SECOND APPEAL (St.) NO.35249 OF 2015*

*with*

*CIVIL APPLICATION NO. 239 OF 2016*

*with*

*CIVIL APPLICATION NO. 915 OF 2016*

Mr. Dhondiba @ Babu Khandu  
Khaire and Ors.

...Appellants/Applicants.

V/s.

Mr. Parshuram Genu Khaire and Ors. ... Respondents.

Mr. Shriram Kulkarni for the Appellants and for the Applicants in  
CAS 239/16.

Mr. Sanjay Thokade a/w. D.B. Lonkar for the Respondents 1 to 6  
and for the Applicants in CAS 915/16.

***CORAM : N.M. Jamdar, J.***

***22 June, 2016.***

**P.C. :-**

Heard learned Counsel for the parties. It is the case of the Appellants – Plaintiffs that pursuant to the consolidation proceedings, title of the Appellants has not been divested neither the possession is handed over. It is the case of the Appellants – Plaintiffs that there are certain incorrect entries in the Consolidation Proceedings, and the Suit for simplicitor injunction is maintainable.

It is also urged that if the First Appellate Court had come to the conclusion that the Civil Court has no jurisdiction by virtue of Section 36(A) of the Maharashtra Prevention of Fragmentation and Consolidation Act, 1906, reference ought to have been made under Section 36(B) of the said Act.

2. The learned Counsel for the Respondents submitted that since the Appellants had approached the authorities under the said Act, such reference is not necessary. The learned Counsel for the Respondents submits that the Appeal filed by the Appellants before the authorities under the Act has been dismissed on 30 December 2005 and no further steps have been taken. The learned Counsel for the Respondents also submits that there is no error in the consolidation proceedings and even if there is an error, the remedy of the Appellants is to challenge it before the authorities under the Act.

3. The learned Counsel for the Appellants seeks time to take instructions and place on record order, if any, passed in the proceedings under the Act, after the decision dated 30 December 2005. Stand over to 29 June 2016.

4. Statement made by the learned Counsel for the Respondents to continue till the next date.

*(N.M. Jamdar, J.)*