

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

WRIT PETITION NO.1325 OF 2017

Shri Dilip Yashwant Botkar & Ors. ... Petitioners

Vs.

Nanabhau Maruti Botkar ... Respondent

Mr.P.Y. Kulkarni for Petitioners

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 19, 2017**

P.C. :

1. This Writ Petition under Article 227 of the Constitution of India is filed challenging the order dated 13.7.2016 passed by the learned Civil Judge Senior Division, Khed in R.C.S. No.1556 of 2013. The respondents/plaintiffs have filed the suit for cancellation of sale deed and injunction and so also prayed that defendant Nos.12 and 13 have committed mistakes in consolidation scheme of gat Nos.918 and 919 of Mauje Pargaon, Taluka Junnar, District Pune. The petitioners, who are the original defendant Nos.7 to 10 moved an application by raising a preliminary issued under section 9A of the Civil Procedure Code that the civil Court has no jurisdiction to try and entertain the suit as there is a bar under

section 36A of the Prevention of Fragmentation and Consolidation Act, 1947. The said application was rejected by the trial Court and hence, this petition.

2. The learned Counsel for the petitioners has submitted that the plaintiffs have prayed in prayer clause (b) of the plaint has prayed that defendant No.12 i.e., Consolidation Officer and defendant No.13 Deputy Superintendent of Land Records, are to be directed to rectify the mistakes which they have committed while implementing the consolidation scheme pertaining to gat Nos.918 and 919 I.e., the suit lands. He further submitted that in prayer clause 13(d), the plaintiffs have sought relief that the entries made by the Deputy Registrar, Narayangaon, dated 26.7.2013 pursuant to the said consolidation scheme are also to be cancelled. He submitted that as per section 36A of the Prevention of the Prevention of Fragmentation and Consolidation Act, 1947, the jurisdiction of the civil Court is barred. He therefore prayed that the order passed by the learned Judge is to be quashed and set aside.

3. Perused the plaint and the prayers made therein. Perused the impugned order. Though the prayers which are pointed out by

the learned Counsel for the petitioners are incorporated in the prayer clause 13 of the plaint, the plaintiffs have also prayed for declaration and perpetual injunction in respect of the suit lands. The title of the suit is for cancellation of sale deed and the perpetual injunction. Thus, it appears that these are the main reliefs sought by the plaintiffs. The submissions of the learned Counsel that the prayer made against defendant Nos.12 and 13 cannot be decided by the civil Court is correct as this particular issue falls within the jurisdiction of the Consolidation Officer under the Prevention of Fragmentation and Consolidation Act, 1947.

4. Therefore, the civil Court by using power under section 36B of the Prevention of Fragmentation and Consolidation Act, 1947 may refer this issue to the concerned authority i.e., the Settlement Commissioner, and give necessary directions to him at the time of actual hearing of the suit and, therefore, the order passed by the learned trial Judge is not to be disturbed.

5. The petition is accordingly dismissed.

(MRIDULA BHATKAR, J.)