

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

WRIT PETITION NO. 2874 OF 2018

VINOD KUMAR KISANDAS PREMANI AND ANOTHER  
VS.  
VIJAY MADHAV JAGTAP AND OTHERS

...  
Advocate for Petitioners : Shri A.S. Patil h/f.  
Shri S.S.Chapalgaonkar  
...

**CORAM : RAVINDRA V. GHUGE, J.  
DATED : 21<sup>st</sup> March, 2018.**

**PER COURT :-**

1] The petitioners/original defendant Nos. 1 and 2 are aggrieved by the order dated 10/01/2018 passed by the Trial Court in Regular Civil Suit No. 491/2011, by which the application Exhibit 90 filed by the petitioners seeking framing of preliminary issue for referring the matter to the competent authority under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, has been rejected.

2] Learned Advocate for the petitioners has strenuously criticized the impugned order. Contention is that the plaintiff desires a declaration and an injunction from the Trial Court. He has practically challenged the Consolidation Scheme which cannot be done before the Trial Court. The jurisdiction of the Civil Court would, therefore, be barred

under Section 36 B of the said Act and hence, the impugned order rejecting Exhibit 19, deserves to be quashed and set aside.

3] I have perused the plaint placed on record. The plaintiff has prayed for an injunction against the defendants and has further prayed for measurement of the suit land. It is also claimed that the land described in Clause I-A be declared as being owned by the plaintiff.

4] I do not find that the plaintiff has challenged the consolidation scheme or has put forth any prayer for quashing the said scheme or for making corrections therein. The plaintiffs claim would stand or fall on its own feet. Absence of any prayer or relief sought against the Consolidation Scheme, would eliminate the need for referring the matter to the competent Court for considering the issue in connection with the consolidation scheme. I do not find that the Trial Court has committed any error in rejecting the said application.

5] The petition, being devoid of merits, is therefore, dismissed.

**(RAVINDRA V. GHUGE, J.)**

shp/-