

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.2521/2019

Shamshuddin Manubai Tamboli & Anr. Petitioners.

V/s.

Keru Shankar Bite & Ors. Respondents.

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Advocate Mr. Prasad Patil i/b Datta Mane for Respondent
Nos. 1 to 3.

Advocate Mr.S.A. Rajeshirke for the Petitioner.

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CORAM : A. M. BADAR, J.

DATE : 14TH NOVEMBER, 2019.

P.C.:

1. This is a Petition by defendants challenging rejection of their application at Exhibit 154 for referring issue whether Sale Deed is in contravention of provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter to be referred as the 'said

Act’).

2. Heard learned counsel for the petitioners/defendants. He argued that the learned trial court has given finding to the effect that defendants have not claimed that the suit property is fragment under the said Act and therefore, it can not be termed as fragment.

3. I have considered the submissions so advanced and perused the impugned order as well as application for referring the issue to the authority under the said Act.

4. Application at Exhibit 154 is not reflecting in issue which need to be adjudicated by the authorities under the said Act. The suit is for injunction simplicitor. Question of title or ownership of plaintiffs over suit land is not involved in the said suit. What is to be considered in such suit for injunction is whether plaintiffs are in possession of the suit

land. Issue as to whether transaction is hit by the said Act, is not covered by such suit for injunction simplicitor. Whether suit property is fragment under the said Act is not required to be determined in such suit.

4. In this view of the matter, no infirmity can be found in the impugned order. The Petition is therefore, dismissed.

(A. M. BADAR, J.)