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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 899 OF 2020**

Shri. Shahaji Balwant Londhe

....Petitioner

V/s.

Shri. Uttam Yeshwant Shinde & another

.....Respondents

Ms. Deepa Kamat a/w Mr. Sagar Kamble for Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 18, 2021.

P.C.:

1] This petition is by Defendant in R.C.S. No. 46/2017. Suit is initiated by Respondent-Plaintiff for permanent injunction based on title.

2] In the Suit, Petitioner-Defendant raised a defence that the transaction is hit by provisions of Section 9 and Section 31 of the **Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act** [Hereinafter referred to as 'the Act' for the sake of brevity] and as such without consent/permission of the Collector, measurement of the land cannot be carried out.

3] Application Exh. 27 came to be moved by the Respondent-Plaintiff for appointment of Court Commissioner under Order XXVI Rule 9 of Code of Civil Procedure, 1908 for carrying out measurement of block No. 1364/54 and 1364/55.

4] Said Application came to be allowed vide order dated 28/04/2017.

5] Petitioner-Defendant moved another Application Exh. 37 for setting aside of the aforesaid order passed below Exh. 27 for appointment of Court Commissioner which also came to be rejected vide order impugned dated 27/07/2018. As such, this Petition.

6] In the backdrop of provisions of Section 31 and Section 9 of the Act, the submissions are, measurement ought not to have been ordered particularly when *prima facie* it can be inferred that title vested in the original Plaintiff-Respondent is contrary to said statutory provisions. A further contention is, already proceedings on revenue site are pending adjudication and the appointment of Court

Commissioner is likely to hamper the right of the Petitioner-Defendant.

7] If the said submissions are considered, it is required to be noted that in the scheme of Order XXVI Rule 9 of C.P.C., it is nowhere contemplated that in case of any dispute about the title, the Civil Court has no authority to pass an order of appointment of Court Commissioner so as to measure the land. As such, provisions of Section 31 and Section 9 of the Act will not operate as an embargo on the right of the plaintiff to claim measurement.

8] In that view of the matter, no case for interference in the impugned order is made out. Petition as such lacks merits, stands dismissed.

9] However, this will not preclude the the Petitioner from canvassing his claim when the transaction in question is hit by aforesaid provisions of law.

[NITIN W. SAMBRE, J.]