

SA Pathan

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

WRIT PETITION NO.12686-2023

Jagannath S/o Sadashiv Shinde & Anr. ... Petitioners

V/s.

Mahadeo S/o Mariti Shinde & Anr. ... Respondents

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Mr. Pankaj P Deokar, for petitioners.

Ms. Manisha Devkar, for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 25, 2023

PC.:

1. The petitioners/original defendant Nos.2 and 3 are challenging orders passed by the Courts below granting temporary injunction against them not to disturb plaintiff's possession over the suit property and not to construct over the suit property. Gat No.2316 described in paragraph 1 of the plaint is the suit property.

2. According to the plaintiff, based on oral partition by way of consolidation scheme in the year 1970, the suit property was allotted to him. Before consolidation, the suit property was bearing Gat No.3100; however, in furtherance of consolidation, the suit property was converted into Gat No.2316. During pendency of the said suit, the plaintiff filed application for temporary injunction restraining defendants from disturbing his possession

and from carrying out construction over the suit property.

3. The Trial Court and the Appellate Court based on the proceeding under the provisions of Bombay Prevention of Fragmentation and Consolidation Act, 1947 recorded a prima facie finding that the suit property is allotted to the plaintiff.

4. The Courts below have rightly observed that challenge to the proceedings under the provisions of Bombay Prevention of Fragmentation and Consolidation Act, 1947 needs to be raised before the same authority. Such challenge is beyond purview of suit in view of Section 36-A of the said Act. Based on the documents prepared by consolidation authority are placed on record. Courts below records a finding that plaintiff is in possession of the suit property. Therefore, the orders passed by the Courts below do not suffer from error of jurisdiction. Hence, there is no error in the order passed by the Trial Court.

5. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)