

Nikita

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

CIVIL REVISION APPLICATION NO.308 OF 2023

Ismail Babalal Shaikh and Ors. ... Applicants

V/s.

Dinkar Chandar Kamble and Ors. ... Respondents

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Mr. Aditya S. Raktade for the Applicants.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 28, 2023

P.C.:

1. By the impugned order, Trial Court had rejected the application under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 by Special Civil Suit No.15 of 2020. It appears that the suit is filed for seeking relief of declaration that the plaintiffs be declared as owners of the suit properties.

2. Consequential injunction against the defendants, not to disturb their possession over the suit property is also sought.

3. The defendants filed an application under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908, alleging barred created under Section 36 (A) of the Bombay Prevention of Fragmentation and Consolidation of holdings, Act 1947.

4. On perusal of the Section 36(a) of the said Act, it appears that the jurisdiction of the Civil Court is barred from entertaining

the question adjudicated by the authorities under the Act. Such question cannot be in the facts of the case, decided based on averments in the plaint.

5. Jurisdiction of the Court is different concept than the plaint barred by the provisions of the statute. It is open for the applicants to raise issue of jurisdiction at appropriate stage of the suit, however, the impugned order does not suffer from either perversity or error of jurisdiction calling for interference under Section 115 of Code of Civil Procedure, 1908.

6. The civil revision application stands rejected. No costs.

(AMIT BORKAR, J.)