



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

919 WRIT PETITION NO. 8797 OF 2024

PRABHU @ PRABHAKAR KESHAV CHAVAN & OTHERS

VERSUS

**RAMKISHAN CHOKHOBASUD DIED THROUGH LRS
SHARDA RAMKISHAN DASUD & OTHERS**

...
Advocate for the petitioners : Mr.N.J.Patil

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CORAM : ARUN R. PEDNEKER, J.

DATE : 20.08.2024

P.C. :

1] Heard the learned counsel for the petitioners. The petitioner challenges the order dated 20.04.2024 passed on Exh.63 in the Application under Order 7 Rule 11 of the Civil Procedure Code filed by the petitioners/defendants in Civil Suit No.2 of 2017 filed by the respondents before the Joint Civil Judge, Junior Division, Renapur. The petitioner contended in the application that the suit is filed for the relief of perpetual injunction and possession of encroached land. The suit is barred by limitation and that there is no cause of action to file the suit. It is also contended that the matter is pending before the Deputy Director, Land Records, Aurangabad for measurement of the land.

It is further submitted that the suit is vexatious and is also barred by Prevention of Fragmentation and Consolidation of Holding Act. The plaint is barred under Section 36 (a) of the Maharashtra Prevention of Fragmentation and Consolidation of Holding Act and that the suit be rejected under Order 7 Rule 11 of the Civil Procedure Code. The claim of the plaintiffs is that they are in possession of suit property on the basis of sale deed bearing Day Book No.451/2003 and that in the year 2011 the plaintiffs noticed the encroachment on their land by the defendants in western side, and therefore, the plaintiffs requested to the defendants for joint measurement of the land but the defendants avoided the same. Thereafter the plaintiff filed suit for perpetual injunction and possession of encroached land.

2] On consideration Section 36 (a) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act bars Civil Court from deciding any issue that has to be decided by the authorities under the Fragmentation and Consolidation of Holdings Act. The bar would be only as regards the issue that are required to be settled by the authorities constituted under the

Fragmentation Act. In the instant case, the suit is filed for declaration, injunction and possession and the declaration of ownership or injunction cannot be decided by the authorities under the Fragmentation Act as has been held in the case of *Avantikabai Shankar Shinde and Ors. Vs. Pratap and Ors.* Decided by this Court on 13.06.2024 in Writ Petition No.13677/2017 (*MANU/MH/3691/2024*).

3] The Civil Court has held that the issue of limitation is mixed issue of facts and law, which needs evidence to prove or disprove the contention. I do not see any error in the impugned order, rejecting the application under order 7 Rule 11. All the contentions of the petitioners herein, can be decided on merits in the Civil Suit. No case is made for rejection of the plaint. Hence, the present writ petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC