



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12588 OF 2024

Shahaji Baliram Gavare And Others

VERSUS

Bapu Tatyaba Gavare

• Mr. M. V. Salunke h/f Mr. V. D. Salunke, Advocate for
the Petitioners

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 28, 2024

PER COURT :

1. This Petition takes exception to the order dated 21.09.2024 passed below Exh. 18 in RCS No. 424/2023.

2. Petitioners are Defendants in the original proceedings. They filed application Exh. 18 for stay of the proceedings in view of section 36(b) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act (for short '**Fragmentation Act**'). This application came to be rejected by passing impugned order with observation that the issue involved in the suit pertains to the possession of the Plaintiff over the suit property only.

3. Learned Counsel for the Petitioners/Original

Defendants submit that since the written statement has been filed by the Defendants contending that the issue raised before the competent authority under the Fragmentation Act with regard to the correctness of the consolidation scheme, in view of the provision of Section 36(b) present suit deserves to be stayed. He also states that since he cannot file counter claim, the order impugned cannot sustain. In support of his submissions, he placed reliance on judgment of Hon'ble Supreme Court in case of Kayalulla Parambath Moidu Haji vs. Namboodiyil Vinodan, Civil Appeal Nos. 5575-5576/2021.

4. There cannot be any quarrel with regard to the proposition of law settled by the Hon'ble Supreme Court in the said judgment. Needless to say that simplicitor permanent injunction without claiming declaration of title which is under cloud is not maintainable. Application, however, is not filed by the Defendants on this ground. This Court, therefore, finds that the judgment cited supra would not assist the Petitioners in any manner whatsoever.

5. Reverting back to the facts of the present

case, averments in the plaint clearly shows that suit is for simplicitor injunction. Plaintiffs claim to be in possession of the suit property. The Defendants denies the said claim, they also claiming possession of the suit property. The only issue which will arise for the purpose of deciding the suit for injunction is who is in possession of the property. It is immaterial that as to who is in the possession of property and their title in the suit property. Merely because written statement is filed by the Defendants contending they have raised independent dispute with regard to the consolidation scheme, the same would not apply as a bar for proceeding with this suit. This Court is unable to concede to the submissions that merely because the Defendants have legal impediment, if any, the suit should be stayed, as this is not the position of law.

6. In view of above discussion, this Court finds no perversity in the impugned order. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)