



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

WRIT PETITION NO. 13677 OF 2017

1. Avantikabai Shankar Shinde,
Age 55 years, occu. Household,
R/o Kambalga Tq. Shirur Ananatpal,
District Latur.
2. Ramrao Shankar Shinde,
Age 53 years, Occu. Agril.,
R/o Kambalga Tq. Shirur Ananatpal,
District Latur.
3. Kishanrao Shankarrao Shinde,
Age 51 years, occu. Agril.,
R/o Kambalga Tq. Shirur Ananatpal,
District Latur.
4. Sumanbai Suresh Shinde,
Age 49 years, Occu. Household,
R/o Omerga (Manna) Tq. Udgir,
District Latur.
5. Sou. Jaishree Pratap Birajdar,
Age 47 years, Occu. Household,
R/o Daithana Tq. Shirur Ananatpal,
District Latur.
6. Kousabai Abhimanyu Bhosale,
Age 45 years, Occu. Household,
R/o Dadagwadi Tq. Ausa,
District Latur.

...Petitioners
(Original Plaintiffs)

~ versus ~

1. Pratap s/o Gunderao Jadhav,
Age 71 years, Occu. Agril.,
2. Raosaheb s/o Vishwanath Shinde,
Age 49 years, Occu. Agril.,
3. Deelip s/o Keroji Shinde,
Age 50 years, Occu. Agril.,

All R/o Kambalga Tq. Shirur Ananatpal,
District Latur.
4. Shamrao s/o Gunderao Jadhav,

Age 77 years, occu. Agril.,
Died Through L.Rs.

- 4-1. Lopabai w/o Shamrao Jadhav,
Age 75 years, Occu. Household,
R/o Kambalga Tq. Shirur Anantpal,
District Latur.
 - 4-2. Rantanbai w/o Baburao Bhadarge,
Age 55 years, Occu. Household,
R/o Shend (H.) Tq. Nilanga,
District Latur.
 - 4-3. Gunderao s/o Shamrao Jadhav,
Age 52 years, Occu. Agril.,
R/o Kambalga Tq. Shirur Anantpal,
District Latur.
 - 4-4. Kewathbai w/o Mohanrao Gaikwad,
Age 50 years, Occu. Household,
R/o Sugaon, Tq. Chakur, District
Latur.
 - 4-5. Ramdas s/o Shamrao Jadhav,
Age 50 years, Occu. Agril.,
R/o Kambalga Tq. Shirur Anantpal,
District Latur.
 - 4-6. Sumanbai w/o Madhavrao Datal,
Age 45 years, Occu. Household,
R/o Bodangaon Tq. And Dist.Latur.
 5. State of Maharashtra,
Through Collector At Latur.
 6. Tahsildar,
Tahsil Office, Shirur Anantpal,
Tq. Shirur Anantpal, Dist. Latur. ...**Respondents**
(Original Defendants)
-

APPEARANCE :

Advocate for the Petitioners : Miss. Madhaveshwari S. Mhase h/f Lex Aquila

Advocate for Respondents No.1 to 3 : Mr. D. A. Mane h/f Mr. Milind Patil

CORAM : ARUN R. PEDNEKER, J.

Reserved Date : 30/04/2024
Pronouncement Date : 13/06/2024

JUDGMENT :

1. Rule. Rule made returnable. With consent of the parties, heard finally.

2. By the present petition, the petitioners challenge the order dated 13/08/2012, passed by the Joint Civil Judge, Senior Division, Nilanga, whereby the Court was pleased to decide the preliminary issue relating to the jurisdiction of the Civil Court to entertain the suit and held that the Civil Court has no jurisdiction to entertain the suit and returned the plaint for presentation before proper forum, and also the order dated 19/09/2017 was passed by the District Judge-1, Nilanga, in Misc. Civil Appeal No.25/2012 whereby the order of the Trial Court dated 13/08/2012 was upheld by dismissing the appeal primarily holding that the suit amounts to challenge to the consolidation and fragmentation scheme itself which the plaintiffs cannot do so by filing a civil suit.

3. The question of law that arises for determination before this Court in the present writ petition is as under : -

“Whether the bar under Section 36(A) read with Section 36 (B) of the Prevention of Fragmentation and Consolidation Holdings Act, 1947 is applicable to the suit filed by the plaintiffs/ petitioners ?”

4. For the above purpose, the brief facts as stated in the plaint are necessary to be considered : -

The plaintiffs have filed the Regular Civil Suit No.175/2011 for declaration of ownership and perpetual injunction in respect of suit property at Survey No.52/A which is converted into land Gut Nos.172 and 146 admeasuring 9 Acres 9 Gunthas being the ancestral property of the petitioners. It is contended in the plaint that the plaintiff Shankar Shinde is the only successor and possessor of the suit property. The defendant No.1 Prabat has his ancestral land in Survey No.66 situated on the Western side of the suit land. It is further contended that on the Eastern side of the suit property, there was land of Mr. Yadav Shinde. On 29/05/1974 said Yadav Shinde sold his 3 Acres 5 Gunthas land in Survey No.52/D to defendant No.1. In the said sale deed, the boundaries are wrongly mentioned and the mistake is not rectified by the defendant No.1. Thereafter, again the defendant No.1 purchased land at Survey No.52/D admeasuring 5 Acres 32 Gunthas from Yadav Shinde and that the defendant No.1 has only these the

two sale deeds as regards his ownership and possession to the extent of Survey No.52/D. It is further the case of the petitioner that Survey No.52/A is absolute property of Venkoba Pandoba shinde and the defendant No.1 purchased entire land of Yadav Shinde.

5. It is further the case of the plaintiff that the Fragmentation Officer, without visiting Survey No.52 in collusion with defendants No.1 to 4, prepared false record to the extent of 5 A 84 R and wrongly shown small portion in the name of plaintiffs qua the suit property. The defendants are not concern with the suit property, however they are denying the ownership of the plaintiff and trying to dispossess the plaintiff from the suit property. There were earlier two suits also filed by the plaintiffs against the defendants which were withdrawn with permission to file fresh suit and accordingly the present suit is filed. The prayer in the civil suit are as under : -

"A) It be declare that, the plaintiff is exclusive owner of suit property more particular describe in para no.1 of the plaint.

B) It be declare that, boundaries of west shown in the sale deed No.2770/74 as executed in favour of deft. No.1 is null and void and not binding on plaintiff.

C) Defendants may be permanently restrained for not to interfere or obstruct b y any mode in peaceful and legal possession of plaintiff on suit property more particular described in para No.1 of the plaint.

D) Any other just and equitable relief in favour of plaintiff may kindly be grant."

6. In the suit filed, the defendants No.1 to 4 filed application below Exhibit 34 under Section 9A of the Code of Civil Procedure for framing preliminary issue. The petitioners filed their say to the application below Exhibit 34 stating that the relief of declaration of ownership and injunction is purely within the jurisdiction of civil court.

7. The Trial Court thus framed preliminary issue as under : -

"Whether this Court have jurisdiction to try the suit under Section 36 (A) of Prevention of Fragmentation and Consolidation Holdings Act ?"

8. The Trial Court by order dated 13/08/2012, passed below Exhibit 37, in paragraphs No.11, 13, 14 and 15 observed as under : -

"11. In this case plaintiff in para No.4 of the plaint specifically pleaded that consolidation officer never verified actual possession of plaintiff over survey No.52. No any notice from the measurement officer or from th State of Maharashtra in respect of measurement of survey No.52 was received to plaintiff. No any panchanama of measurement was prepared by either of the officer in presence or in absence of plaintiff. So, plaintiff have challenged the act of the defendants.

12.

13. Plaintiff further pleaded that defendant No.5 and 6 have never visited survey No.52 and in collusion with defendant No.1 and 4 prepared false record and wrongly shows that defendant No.1 to 4 are in possession of 5 H. 84 R. of land Survey No.52. The record of the employees of defendant No.5 and 6 having no foundation of law and facts. The employees of defendant No.5 and 6 prepared false and fabricated panchnama and record of defendant No.5 and 6 is challenged by plaintiff.

14. Plaintiff further pleaded that defendant No.5 and 6 without verifying the title document had prepared 7/12 extract in the name of defendant No.1 and 4 to the extent of 5 H. 84 R. The revenue department did not obey the rules of the Transfer of Property Act and made false record in the 7/12 extract name of defendant No.1 and 4.

15. Thus, in short, plaintiff is challenging the entire measurement carried out in the implementation of scheme of Fragmentation and consolidation Act. On the contrary, defendant in his written statement particularly on page No.8 specifically pleaded that Yadavrao was found in possession of 6 H. 28 R. land of Survey No.52 at the time of measurement of 1971-72. Hence, as defendant No.1 was found in more possession of area in the scheme implemented by Government under the provisions of Prevention of Fragmentation and Consolidation on Holdings Act of 1947. The act of consolidation officer cannot be challenged before Civil Court. Civil Court have no jurisdiction to decide the act of Consolidation officer under Section 36 (A) of the Prevention of Fragmentation and Consolidation on Holdings Act of 1947. The

above pleading clearly indicates that land was measured and defendants were declared to be found in possession of excess land than that which were in their name of his vendor. Defendants were declared as owner by the consolidation officer on the basis of finding of consolidation officer. Mutation was carried out in the name of defendant No.1 and 4. The authority cited supra is squarely applicable in this case. So, for the reasons stated above, I came to conclusion that this court have no jurisdiction to entertain the dispute under Section 36 (A) of the Prevention of Fragmentation and Consolidation on Holdings Act of 1947. Accordingly, I recorded my finding on preliminary issue as this court have no jurisdiction to entertain the dispute."

The Trial Court finally held that in view of bar contained in Section 36 (A) of the Fragmentation Act, the Civil Court has no jurisdiction to entertain the suit and the plaint is returned for presentation before proper forum.

9. The above order of the Trial Court was challenged before the District Court in Misc. Civil Appeal No.25/2012. The Appellate Court dismissed the appeal filed by the petitioners, against which the present writ petition is filed.

10. Challenging the order passed by the Courts below, the learned Advocate for the petitioners Miss. Madhaveshwari S. Mhase h/f Lex Aquila submits that the Trial Court has only seen Section 36 (A) of the Act and has not referred to Section 36 (B) at all wherein the jurisdiction of the Civil

Court has to be understood in context of Section 36(A) and 36(B) of the Act. The learned Advocate for the petitioners also submits that a declaration of the ownership is purely the function of the Civil Court and for that purpose, she relies upon the Judgment of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu vs. Ramalinga Samigal Madam, reported in (1985) 4 Supreme Court Cases 10***. The learned Advocate for the petitioners further submits that in view of Section 36 (B) of the Act, in the event any issue is required to be decided by the Consolidation Officer, the issue has to be framed by the Trial Court and refer the same to the Consolidation Officer and await the decision of Consolidation Officer, and as such, suit is not barred in view of Section 36 (B) of the Act but rather maintainable.

11. The learned Advocate for the petitioners also submits that in an independent proceedings after filing of the suit, the authorities under the Act has also rectified the errors in the consolidation scheme and this fact also becomes necessary for the purpose of deciding the present petition as the suit for injunction against the respondents would also be maintainable in view of the subsequent correction in the consolidation scheme. The said order of the rectification of consolidation scheme has not been challenged.

12. Per contra, the learned Advocate Mr. D. A. Mane h/f Mr. Milind Patil, appearing for the respondents submits that the Regular Civil Suit

No.175/2011, more particularly in paragraph No.4, 6 and 8 seeks to nullify the consolidation scheme which has attained finality. It is further submitted that the suit is not maintainable in view of the specific stand of the petitioner in paragraph No.6 of the writ petition that the plaintiff in the suit is not claiming any declaration regarding order of Consolidation Officer confirming the title and possession of the defendants.

13. The learned Advocate for the respondents also submits that since consolidation scheme regarding the suit land has attained finality as admitted in the Regular Civil Suit No.175/2011 and no reference as contemplated under Section 36(B) of the Act can be made to the consolidated officer. The learned Advocate further submits that Section 36 (B) of the Act is for adjudication of undecided issue to be decided under the Prevention of Fragmentation and Consolidation Holdings Act, 1947 and not for reopening concluded scheme.

14. The learned Advocate for respondents relies upon the Judgment of ***Yeshwant Ramchandra Dhumal Deceased By L.Rs. vs. Shri Shankar Maruti Dhumal and Another, reported in 2001 AIR Bom.384 = Mah L J (2) 576.*** He also relied upon the Judgment in ***Narayan S. Bite and Ors. vs. Mahadeo Shripati Pise and Ors., reported in 2001 (2) All MR 414,*** and submits that in view of Section 36 (A) of the Act, Civil Courts jurisdiction is barred where the question is

relating to the putting owner in possession of the holding who is entitled under the scheme.

15. Considered the rival submissions, at the outset it is necessary to note the relevant provisions of the Prevention of Fragmentation and Consolidation Holdings Act, Section 36(A) and 36(B) as under :-

“36A. Bar of jurisdiction

(1) No Civil Court or Mamlatdar's Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority.

(2) No order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdar's Court.”

“36B. Suits involving issues required to be decided under this Act

(1) If any suit instituted in any Civil Court or Mamlatdar's Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the 'competent authority') the Civil Court or Mamlatdar's Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court or Mamlatdar's Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court

or Mamlatdar's Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto."

16. The prayer in the suit as quoted above in paragraph 5 is to declare that the plaintiffs are exclusive owners of the suit property and for injunction restraining the defendants not to interfere or obstruct by any mode the peaceful possession of plaintiff, over the suit property, more particularly described in paragraph 1 of the plaint.

17. In the case of **Prashant Singh and Others vs. Meena and others, reported in 2024 SCC OnLine SC 834**, the Hon'ble Supreme Court while considering the U. P. Consolidation of Holdings Act, 1953, at paragraph No.12 has observed as under : -

*"12. The object of the 1953 Act is to prevent fragmentation of the land holdings and consolidate them in such a fair and equitable manner that each tenure holder gets nearly equivalent land rights in the same revenue estate. The duty of a Consolidation Officer under Section 49 of the 1953 Act is to prevent fragmentation and consolidate the different parcels of land of a tenure holder. Such a power can be exercised only in respect of those persons who are already the tenure holders of the land. Conversely, the power under Section 49 of the 1953 Act cannot be exercised to take away the vested title of a tenure holder. No such jurisdiction is conferred upon a Consolidation Officer or any other Authority under the 1953 Act. **The power to declare the ownership in an immovable property can be exercised only by a Civil***

Court save and except when such jurisdiction is barred expressly or by implication under a law. Section 49 of the 1953 Act does not and cannot be construed as a bar on the jurisdiction of the Civil Court to determine the ownership rights.”

18. In the case of **Prashant Singh and Others** (Supra), the Hon’ble Supreme Court has held that the power to declare ownership of an immovable property can be exercised only by a Civil Court save and except when the jurisdiction is barred expressly or by implication under the law. The Hon’ble Supreme Court in case of **Ramalinga Samigal Madan** (Supra) considered the question whether the Civil Court’s jurisdiction to determine the nature of land in respect whereof a ryot has sought a ryotwari patta under Section 11 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 is ousted or barred under Section 64-C of that Act. The Supreme Court while considering provisions of Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, considered the jurisdiction question of principle of exclusion of Civil Court’s jurisdiction at paragraph No.8 as under : -

“The principles bearing on the question as to when exclusion of the Civil Court’s jurisdiction can be inferred have been indicated in several judicial pronouncements but we need refer to only two decisions. In Secretary of State v. Mask and Company, the Privy Council at page 236 of the Report has observed thus:

It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

In Dhulabhai v. State of M.P. Hidayatullah, C. J., speaking for the Court, on analysis of the various decisions cited before the Court expressing diverse views, culled out as many as 7 propositions; out of them the first two which are material for our purposes are these:

(1) Where the statute gives a finality to the orders of the special tribunal the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

*(2) **Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.***

Where there is no express exclusion the examination of

the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.”

19. Relying upon the principle laid down in **Dhulabhai v. State of M.P.**, the Supreme Court in case of **Ramalinga Samigal Madam** (Supra) considered various provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1954 and held at paragraphs No.12, 13 and 14 as under : -

“12. Now turning to the question raised in these appeals for our determination, it is true that Section 64-C of the Act gives finality to the orders passed by the Government or other authorities in respect of the matters to be determined by them under the Act and sub-section (2) thereof provides that no such orders shall be called in question in any court of law. Even so, such a provision by itself is not, having regard to the two propositions quoted above from Dhulabhai's case, decisive on the point of ouster of the Civil Court's jurisdiction and several other aspects like the scheme of the Act, adequacy and sufficiency of remedies provided by it etc., will have to be considered to ascertain the precise intendment of the Legislature. Further, having regard to the vital difference

indicated above, in between the two sets of provisions dealing with grant of ryotwari pattas to landholders on the one hand and ryots on the other different considerations may arise while deciding the issue of the ouster of Civil Court's jurisdiction to adjudicate upon the true nature of character of the concerned land. Approaching the question from this angle it will be seen in the first place that Section 64-C itself in terms provides that the finality to the orders passed by the authorities in respect of the matters to be determined by them under the Act is "for the purposes of this Act" and not generally nor for any other purpose. As stated earlier the main object and purpose of the Act is to abolish all the estates of the intermediaries like Zamindars, Inamdars, Jagirdars or under-tenure holders etc. and to convert all land-holdings in such estates into ryotwari settlements which operation in revenue parlance means conversion of alienated lands into non-alienated lands, that is to say, to deprive the intermediaries of their right to collect all the revenues in respect of such lands and vesting the same back in the Government. **The enactment and its several provisions are thus intended to serve the revenue purposes of the Government, by way of securing to the Government its sovereign right to collect all the revenues from all the lands and to facilitate the recovery thereof by the Government and in that process, if necessary, to deal with claims of occupants of lands, nature of the lands, etc. only incidentally in a summary manner and that too for identifying and registering persons in the revenue records from whom such recovery of revenue**

is to be made. The object of granting a ryotwari patta is also to enable holder thereof to cultivate the land specified therein directly under the Government on payment to it of such assessment or cess that may be lawfully imposed on the land. Section 16 is very clear in this behalf which imposes the liability to pay such ryotwari or other assessment imposed upon the land to the Government by the patta-holder. The expression "for the purposes of this Act" has been designedly used in the section which cannot be ignored but must be given cogent meaning and on a plain reading of the section which uses such expression it is clear that any order passed by the Settlement Officer either granting or refusing to grant a ryotwari patta to a ryot under Section 11 of the Act must be regarded as having been passed to achieve the purposes of the Act, namely, revenue purposes, that is to say for fastening the liability on him to pay the assessment or other dues and to facilitate the recovery of such revenue from him by the Government; and therefore any decision impliedly rendered on the aspect of nature or character of the land on that occasion will have to be regarded as incidental to and merely for the purpose of passing the order of granting or refusing to grant the patta and for no other purpose."

"13. Secondly, the principle indicated in the second proposition enunciated in Dhulabhai case requires that the statute, when it creates a special right or liability and provides for its determination, should also lay down that all questions about the said right or liability shall be determined by the

*Tribunal or authority constituted by it, suggesting thereby that if there is no such provision it will be difficult to infer ouster of the Civil Court's jurisdiction to adjudicate all other questions pertaining to such right or liability. Since from the notified date all the estate vests in the Government free from encumbrances) it must be held that (all the lands lying in such estate including private land of land-holder and ryoti land cultivated by a ryot would vest in the Government and the Act could be said to be creating a new right in favour of a land-holder (re: his private lands) and a ryot (re: ryoti land) by granting a ryotwari patta to them under Sections 12 to 15 and Section 11 respectively, and the Act provides for determination of such right by the Settlement Officer. **Question is whether the Act also provides for determination of all questions about such right by the Settlement Officer ?** On this aspect, as has been indicated earlier (unlike in the case of an application for a ryotwari patta by a land- holder under Section 12, 13 or 14 where an inquiry into the nature or character of the land and the history thereof is expressly directed to be undertaken by virtue of Section 15 in the case of an application for a ryotwari patta by a ryot under Section 11 there is no express provision for any inquiry into the nature or character of the land before granting or refusing to grant such patta to the applicant. It is true that some inquiry is contemplated if Section 11 is read with proviso to clause (d) of Section 3 but even then there is no provision directing inquiry for the ascertainment of the nature of the land, namely, whether it is a ryoti land or communal land but it is obvious that impliedly a decision on this aspect*

*of the matter must be arrived at the Settlement Officer before he passes his order on either granting or refusing to grant such patta. Obviously such decision rendered impliedly on this aspect of the matter will be an incidental one and arrived at in the summary manner only for the purpose of granting or refusing to grant the patta. **A summary decision of this type in an inquiry conducted for revenue purposes cannot be regarded as final or conclusive so as to constitute a bar to a Civil Court's jurisdiction adjudicating upon the same issue arising in a suit for injunction filed by a ryot on the basis of title and/or long and uninterrupted possession.** Since a full-fledged inquiry on the nature or character of land is provided for under s. 15 in the case of an application by a land-holder the character of the Settlement Officer's decision on such issue may be different but that question is not before us."*

*"14. Thirdly, having regard to the principle stated by this Court while enunciating the first proposition in Dhulabhai's case it is clear that **even where the statute has given finality to the orders of the special tribunal the civil court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the civil court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer***

exclusion of Civil Court's jurisdiction. Now take the case of an applicant who has applied for a ryotwari patta under Section 11 staking his claim thereto on the basis of his long and uninterrupted possession of the ryoti land but the Settlement Officer on materials before him is not satisfied that the land in question is ryoti land ; in that case he will refuse the patta to the applicant. But can he, even after the refusal of the patta, protect the applicant's long and uninterrupted possession against the Government's interference ? Obviously, he cannot, for it lies within his power and jurisdiction merely to grant or refuse to grant the patta on the basis of materials placed before him. But such a person even after the refusal of the ryotwari patta would be entitled to protect his possessory title and long enjoyment of the land and seek an injunction preventing Government's interference otherwise than in due course of law and surely before granting such relief the Civil Court may have to adjudicate upon the real nature of character of the land if the same is put in issue. In other words since the Settlement Officer has no power to do what Civil Court would normally do in a suit it is difficult to imply ouster of Civil Court's jurisdiction simply because finality has been accorded to the Settlement Officer's order under Section 64-C of the Act."

20. Thus, for applying the above principles of law for exclusion of the jurisdiction of Civil Court it is necessary for this Court to examine the plaint

and the prayers. It is necessary to analyze the scheme of the Fragmentation Act to ascertain the bar of the jurisdiction of the Civil Courts, more particularly the issues that are required to be settled, decide or dealt with under the Act by the State Government or any other officer or authority under the Act. The Fragmentation Act is enacted to prevent the fragmentation of agricultural holdings and to provide for consolidation of agricultural holdings for the purpose of better cultivation thereof. Chapter II of the Act deals with the determination of local and standard areas and treatment of fragments. Under the said chapter, the State Government specifies a village, mahal or taluka or tahsil or any part thereof as a local area for the purposes of this Act and prescribes minimum areas. Under Section 6 of the Act, every fragment in the local area shall be entered in the Record of Rights. Section 7 of the Act provides for transfer and lease of fragments in respect of which notice under sub-section (2) of Section (6) is given. Section 8 of the Act provides for prohibition of transfer or partition so as to create a fragment. Section 8AA of the Act deals with restriction on partition of land. Section 14 prohibits sale of fragment by the Court orders. Chapter III of the Act deals with preparation of scheme and compensation. Section 19 of the Act deals with publication of draft scheme and Section 20 deals with confirmation of draft scheme. The scheme confirmed under Section 20 is implemented, under Section 21 of the Act. The scheme comes into force after person entitled for possession of holding under the

Act and is put into possession of the holding respectively allotted to them. Chapter IV deals with the effect of consolidation proceedings and consolidation of holdings. Chapter IV-A deals with the powers and procedure of Consolidation Officers with the general provisions.

21. From the perusal of the Act it is apparent that the authorities constituted under the Act are not entitled to grant declaration of ownership. It merely consolidates the fragments and prevent fragmentation of the consolidation. However, if there is a dispute raised as regards title of the consolidated holding and a dispute is raised before the Consolidation officer or the or the authority under the Act, the same cannot be decided by the authorities constituted under the Act. There is no provision for deciding the title of the land. The Consolidation officer on a summary inquiry on the basis of material available before him, consolidates the holding and makes a entry in the record of rights as regards all the fragments in the local area and may also give possession of the holdings. If the ownership of the consolidated holding is disputed, the same cannot be adjudicated by the authorities constituted under the Fragmentation Act. The issue will have to be decided by the Civil Court.

22. If on such issue being decided in favour of the plaintiffs and the title of consolidated holding is held to be in favour of the plaintiffs, the same will have to be rectified in the records on the basis of declaration of title by the

Civil Court. This does not amount to changing the scheme of the consolidation. If there is a declaration that the plaintiffs are part owner of the suit land and the land has to be partitioned, the same may partitioned following the process under the Fragmentation Act. Such a partition can only be made by following the process under the Fragmentation Act by the authorities under the Act and the issue will have to be referred under Section 36B of the Act.

23. Section 36A of the Act refers to any question which is required to be settled, decided or dealt with by the State Government or any officer or authority under the Act. The issue of title cannot be decided by the State Government or any officer or authority under the Act. However, ancillary issue, in a given suit may be required to be determined under the Act, and if such an issue is involved in the suit which has to be decided by the competent authority under the Act, then the Civil Court has to formulate such an issue under Section 36B and shall stay the suit and refer such issue to the competent authority for determination.

24. Coming to the facts of the present case, the plaintiffs claim that they are the owners of the suit property and the Consolidation officer without appreciating the ownership of the petitioners on the suit property, has recorded the lands in the name of the defendants and prepared a 7/12 extract in the name of defendants No.1 to 4 to the extent of 5 H 84 R although there was no such transfer in their favour. It is the contention of

the plaintiffs that the suit land was considered to be of the defendants and the same is recorded under the Consolidation Act in the name of the defendants. The plaintiffs disputes the ownership of the consolidated land property, which is recorded in the name of the defendants. The ownership issue can only be decided by the Civil Court, and in the event, the plaintiffs are found to be the owners, their names has to be brought on revenue records in terms of the declaration as may be granted by the Civil Court. There is also a prayer of injunction which has to be determined by the Civil Court.

25. In the instant case, in an independent proceedings under the Consolidation Act, necessary rectification is carried out by the authorities under the Act and the corrections of the suit lands are also recorded consolidation scheme. The rectification in the consolidation proceedings is purely an action which can be initiated under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act and the authorities constituted thereunder has to determine the same.

26. As regards title of the suit property / holding as consolidated under the Consolidation Act, can only be determined by a Civil Court if there is a dispute of the same. So also an order of injunction can only be passed by a Civil Court.

27. Thus, the orders of the Courts below in returning the plaint is bad in

law. The suit is thus restored to the file in the Trial Court to formulate appropriate issues and decide the ownership issue of the suit land. Any other issue that may arise as regards the Fragmentation Act be may remitted to the authorities under Section 36 B of the Fragmentation Act. As such, the writ petition is disposed of in above terms.

Rule made absolute in above terms.

(ARUN R. PEDNEKER, J.)

vj gawade/-.