

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14571 OF 2022

Dhanaji Bhauso Kadam And Anr.

...Petitioners

**Versus**

Suresh Bhauso Kadam And Ors.

...Respondents

\*\*\*\*\*

Mr. Mahendra Deshmukh for the Petitioners.

Mr. Kuldeep Nikam for Respondent No.16.

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**CORAM : M.M. SATHAYE, J.**  
**DATE : 18 SEPTEMBER 2024**

**PC:**

1. Rule. Rule made returnable forthwith. Learned counsel for the contesting Respondent No. 16 waives service. Respondent Nos. 1 & 2 are duly served, but none appears for them. Rest of the Respondents are stated to be formal parties and a praecipe to that effect is filed. Heard finally by consent of parties.

2. Petitioners are original Plaintiffs and Respondents are original Defendants. By this petition, the Petitioners are challenging the Order dated 3<sup>rd</sup> August 2022 passed by Joint Civil Judge Junior Division Kadegaon, below Ex. 1 in Reg. Civil Suit No. 84 of 2012 ('the said Suit' for short). By this impugned order, the learned Trial Judge, at the instance of Respondent No. 16, at the stage of final hearing, has referred an additional issue framed in that suit, to the competent Authority i.e. Collector of Sangli, under the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('the said Act' for short).

### CASE AND SUBMISSIONS

3. Few facts necessary for disposal of this petition are as under. The said Suit is filed for partition and separate possession of the suit properties. Respondent-Defendant No. 1 & 2 have sold their share of Gat Nos. 525 and 526 (part of suit properties) to Respondent-Defendant No. 16 by a sale deed dated 4<sup>th</sup> November 2006 ('the said Sale Deed' for short). It is the case of the Petitioners that the said Sale Deed is hit by provisions of the said Act, which fact is disputed/denied by the Respondent-Defendant No. 16 by filing additional written statement. On this rival contention, the Trial Judge has framed an additional issue at Ex. 79, which reads thus :

“Whether the sale deed dated 04/11/2006 is hit by the provision of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ?”

4. It appears that at the stage of final arguments, the advocate for the Defendants submitted and requested that this issue is required to be referred to competent authority as per bar under section 36A and 36B of the said Act.

5. The Petitioners/Plaintiffs contented that there is no dispute about total area of Gat Nos. 525 and 526 and there is also no dispute regarding the area sold to the Respondent – Defendant No. 16 and thus the total balance area left after execution of sale deed is also undisputed. They contended that the area sold to Defendant No. 16 is less than the standard area fixed for Sangli District and therefore what is really needed to be adjudicated is whether the said Sale Deed is illegal and hence on this admitted position, the Civil Court has a right to decide the additional issue.

6. The learned Trial Judge, after hearing both sides, has referred the said issue to the Competent Authority for decision under the impugned Order. It is in these circumstances that the Petitioners are before this Court.

7. Learned counsel for the Petitioners invited this Court's attention to the provisions of sections 9, 36A & 36B of the said Act. Proviso to section 9 of the said Act is relied upon by the learned Trial Judge. He submitted that the issue under section 9 was not at all under consideration and there was no need to apply its proviso to the facts of this case. Inviting this Court's attention to the recitals in the said Sale Deed, he submitted that it is specifically provided therein that the land is to be used for agricultural purpose and the transaction has taken place purely for the purpose of Agriculture. Therefore, it is urged that the proviso to section 9 of the said Act would not be attracted at all. He submitted that since the area and its extent being sold to Respondent-Defendant No. 16 is admitted and there is no dispute as to whether it is a fragment or not, there is no need to refer the issue to the Competent Authority. He asserted that the issue as framed and as understood in the light of pleadings, is well within the jurisdiction of the Civil Court. He has relied upon the judgment of *Eknath Daval Thete Vs. Ganpat Dagdu Thete (2016 (2) Bom.C.R. 126)*, which according to him, is not properly considered by the Trial Judge. He submitted that this is nothing but an attempt to prolong the suit.

8. *Per Contra*, the learned counsel for the Respondent No. 16 submitted that the issue as framed, is required to be referred to the Competent Authority and the jurisdiction of the Civil Court to decide the said issue is barred under section 36-A and 36-B of the said Act. He

submitted that the learned Trial Judge has rightly relied upon the judgement of *Bhikanrao Shamrao Bibne Vs. Ayubkha Mehboobkha (W.P.No. 4615 of 2018 Order dated 25/09/2019)* where this Court (at Nagpur Bench) has found that in such circumstances reference to the Competent Authority is necessary. He has also relied upon the judgment of this Court (at Nagpur Bench) in the case of *Geetabai w/o Mahagulal Panchbudhe Vs. Kailash s/o Prakashchandra Makkad (2018 SCC OnLine Bom 3338)* in support of his case. He stressed on the word ‘involves / involving’ used in section 36-B to argue that in the present case, such issue is required to be decided by the Competent Authority involved. On these submissions, the Respondent No. 16 has justified the impugned Order. He however fairly conceded that area sold to Respondent-Defendant No. 16 under the said Sale Deed is not under dispute.

#### REASONS AND CONCLUSIONS

9. I have carefully considered the rival submissions and perused the caselaws relied upon. The effect of the impugned order i.e. proceedings before the competent authority, were stayed by this Court under Order dated 28 November 2022.

10. At the outset, it must be noted that the impugned Order is passed on ‘submission’ of the advocate for the Defendants at the time of final arguments in the suit. There is no application by Defendant No. 16 or Plaintiff’s reply thereto. That is the reason of passing the impugned Order below Exh. ‘1’. I have tried my best to understand from learned counsel for the contesting parties, their exact case and counter-case. Both the learned counsel have fairly assisted the Court.

11. Section 2(10) of the said Act defines ‘standard area’ to mean the

area which the State Government determines under section 5 as minimum area necessary for profitable cultivation in any particular local area. Section 2(4) defines 'fragment' to mean a plot of land less than the standard area under the said Act. Section 5 provides for determination and revision of standard areas from time to time. Section 6 contemplates that a standard area for a particular local area will have to be notified and notice of the entry shall be given as provided therein. Section 7(1) prohibits transfer of any fragment in respect of which notice has been given under section 6(2) of the said Act, except to the owner of contiguous survey number or reorganized subdivision, subject to proviso giving certain exceptions. Similarly, section 7(2) prohibits lease of any fragment, other than to a person cultivating land which is contiguous to the fragment. Section 8 prohibits transfer or partition of a land which creates a fragment. In short, the said Act prohibits creation and transfer of a fragment and the fragment is dependent upon standard area determined by the state.

12. I have perused the amended plaint and additional written statement of Defendant No. 16 (Petition page 34 & page 50 – Ex.91) leading to framing of issue in question. The Defendant No. 16 has nowhere disputed the standard area determined and notification for the subject matter area (Dist. Sangli) u/s. 5 & 6 of the said Act. It is not his case that applicable standard area necessary to determine fragment is required to be determined. In fact, it is specifically contended by him that the said Sale Deed is not cancelled by any competent Authority and therefore it is not hit by provisions of the said Act. It is also not the case of the Respondent No. 16 that he is the owner of contiguous survey number. Therefore once the standard area for the district is already notified and there is also no dispute about the area which is sold to

Respondent- Defendant No. 16 by Defendant Nos. 1 and 2, in my opinion no issue is involved which needs determination by the competent authority under the said Act. Whether a fragment exists or what is its extent in the given area is not in issue at all. The real issue between the parties is “whether the area sold to Defendant No. 16 under sale deed dated 04 November 2006 is less than the standard area determined and notified for the subject matter area ?”

13. In these peculiar facts, all that is required to be done by the Court is to check whether the area sold under the sale deed is less than the standard area notified for the subject matter area. If it is so found, then the said Sale Deed will be in contravention of the said Act.

14. Perusal of impugned order paragraph 11 shows that even the learned Trial Judge was clear in holding that there is no dispute regarding total area of land involved and area sold to Defendant No. 16. What has really weighed with the learned Trial Judge is section 9 of the said Act and the caselaw of *Bhikanrao Shamrao Bibne (supra)*. Let us consider both.

15. Let us first consider whether section 9 of the said Act is rightly applied by the Trial Judge. Section 9 deals with penalty for transfer or partition contrary to the provisions of the said Act. First proviso to section 9(3) speaks about regularization of such transfers (contrary to the provisions of the said Act) and it is in that context, that section 9 has to be applied. Firstly, in the present case, undisputedly there is no issue about regularization of the said sale deed by Respondent - Defendant No. 16. It is nobody's case that Respondent No. 16 has

applied for regularization. Admittedly the Respondent No. 16 has not applied for such regularization, as fairly accepted by his learned counsel. Secondly, first proviso to section 9(3) also shows that it is applicable if the land is allocated to residential, commercial, industrial, public or semi public or any non-agricultural use. In present case, admittedly, as per the recitals of the said sale deal (Petition page No. 41), which is duly signed by the Respondent No. 16, the sale is purely for agricultural purpose. For both these reasons, application of section 9 or its proviso by the learned Trial Judge to the facts of the present case is completely uncalled for and can not be sustained.

16. So far as the judgment of *Bhikanrao Shamrao Bibne (supra)* is concerned, the facts therein were that defendants pleaded that sale deed in favour of plaintiff is hit by provisions of the said Act. An issue was framed accordingly. Plaintiff filed application seeking reference to competent Authority, which was rejected. Hence plaintiff challenged the rejection in writ petition, who insisted that issue must be referred to Competent Authority. These facts were under consideration. In this context, the Court held that a question may arise 'whether the purchaser therein (plaintiff) is entitled to regularization of the transaction' and such question may fall for determination of the competent authority. This can be gathered from paragraph 10 of the said judgment. The present case is completely distinguishable. In the present case, admittedly the Respondent No. 16 has not even applied for such regularization, as fairly accepted by his learned counsel. Hence no such question of regularization is arising at all. Additionally, in this case, as already held above, no issue is involved which needs determination by the competent authority under the said Act. Therefore this caselaw will not advance the case of the Respondent No.16.

17. Lastly, the judgment relied upon by the learned counsel for Respondent No. 16 in the case of *Geetabai Mahagulal Panchbudhe (supra)* is also clearly distinguishable on facts. The said judgment records a concession given by the counsel for the plaintiff therein, that it is beyond the jurisdiction of civil court to decide whether the land which is subject matter of the sale deed is a fragment (see paragraph no. 16). In the present case, there is no such concession. In fact, learned counsel for the Petitioners-Plaintiffs have asserted that the issue as framed and as understood in the light of pleadings, is well within the jurisdiction of the Civil Court. Therefore this caselaw also will not advance the case of the Respondent No.16.

18. In the aforesaid peculiar facts, and for the reasons stated above, petition succeeds. The impugned Order can not be sustained and the same is quashed and set aside. Writ petition is allowed and Rule is made absolute. No order as to costs.

19. All concerned to act on duly authenticated or digitally signed copy of this order.

**(M.M. SATHAYE, J.)**