

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 908 OF 2025

Namdeo Bhiwa Kamble ...Petitioner

Versus

Dhondubai Arjun Kamble (deceased) and
ors. ...Respondents

Mr. Milind Deshmukh, for the Petitioner.

CORAM: N. J. JAMADAR, J.
DATED: 22nd JANUARY, 2025

PC:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 10th September, 2024 passed by the learned Civil Judge, Junior Division, rejecting the application to refer the issue under Section 36B of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("the Act, 1947") to the competent authority for determination of the question, as to whether the Sale Deed executed by the defendant in respect of the suit property is in violation of the provisions of the Act, 1947.
3. The plaintiff, initially, instituted the suit to exercise the right of preemption. Post amendment in the plaint, ground of

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transaction of sale being barred by the provisions of the Act, 1947 has been raised.

4. The learned trial court was persuaded to reject the application as the suit was instituted for exercise of the preemption right.

5. An issue as to whether the Sale Deed is illegal, has already been framed. It has to be demonstrated that the transaction of sale pertains to the property which is a fragment. Having regard to the nature of the suit and the issues that arise for determination therein, it appears that the learned Civil Judge committed no error in declining to make the reference.

6. The petition stands dismissed.

[N. J. JAMADAR, J.]