

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3036 OF 2025

1. Shri. Ravindra Shivaji Wagh.
Age: 59 years, Occu.: - Agriculturist
R/o. Village Khudus, Tal. Malshiras,
Dist. Solapur.

2. Shri. Chandrakant Shivaji Wagh.
Age: 51 years, Occu.: - Agriculturist.
R/o. Village Khudus, Tal. Malshiras,
Dist. Solapur.

... Petitioners

V/s.

1. Shri. Mahadev Ramhari Malhar.
Age:- 47 years, Occu.: Agriculturist.
R/o Village Khudus, Tal.: Malshiras,
Dist.: - Solapur.

2. Shri. Narayan Balu Malhar
(Since Deceased through LRs.)

2A-Smt. Ratan Narayan Malhari
Age: 87 years. Occu. Household.
R/o. Village Khudus, Tal. Malshiras,
Dist. Solapur.

2B-Shri. Maruti Narayan Malhar
Age:- 57 years, Occu.: Agriculturist.
R/o. Village Khudus, Tal. Malshiras,
Dist. Solapur.

2C-Shri. Ganesh Narayan Malhar
Age: -55 years, Occu.: Agriculturist.
R/o. Ambegaon, Tal. Haveli,
Dist. Pune.

2D-Sau. Aruna Balu Firse.

Age:- 66 years, Occu.: -Household.

R/o. Village Khudus, Tal. Malshiras,

Dist. Solapur.

2E-Sau. Shobha Mhadev Togarale.

Age:-51 years, Occu.: - Household.

R/o. Purandar Building, Balajinagar,

near Sadhguru Building, Gultekdi, Pune.

3. Shri. Ankush Ramhari Malhar.

Age:- 43 years, occu.: Agriculturist.

R/o Village Khudus, Tal.: Malshiras

Dist.: Solapur.

4. The State of Maharashtra

Through District Collector, Solapur.

5. The Asst. Superintendent of Land

Records, Malshiras, Tal. Malshiras,

Dist. Solapur.

6. The Superintendent of Land Records,

Solapur.

7. The Deputy Director of Land Records

Pune Division, Pune,

Add:- New Administrative Building,

Opp. Council Hall, Pune

...Respondents

Mr. R. D. Phade, Advocate for Petitioners.

Mr. Anil Kupade, Advocate for Respondent Nos. 1 to 3.

Mr. Sanjay Rayrikar, AGP for State-Respondent Nos. 4 to 7.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : DECEMBER 9, 2025

FINAL ORDER:

1. Petitioners/original plaintiffs impugn order dated 17th October 2024 passed by Civil Judge, Senior Division, Malshiras below Exhibit-83 in Regular Civil Suit No. 04 of 2005, thereby framing an additional issue as to the applicability of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as “Consolidation Act”).
2. Petitioners filed Regular Civil Suit No. 4 of 2018 before Civil Judge, Senior Division, Malshiras claiming relief that order dated 23rd March 2017 passed by Consolidation Authorities is invalid and not binding on plaintiffs’ right of ownership acquired by way of adverse possession. Plaintiffs have further sought decree of perpetual injunction against Consolidation Authorities restraining them from implementing order dated 23rd March 2017. Defendants appeared in suit and refuted plaintiffs’ claims. It is contention of defendants that suit is barred in view of provisions of Section 36-A of Consolidation Act, 1947.
3. Defendant nos. 1 and 3 filed application below Exhibit-25 seeking to frame preliminary issue as to whether suit is maintainable in view of provisions of Section 36-A of Consolidation Act, 1947. Said application was rejected vide order

dated 3rd January 2019 observing that suit has been filed for declaration of ownership on basis of possession and there is no challenge to consolidation scheme, and as such bar under Section 36-A would not attract.

4. It appears that legal heirs of defendant no.2 moved application below exhibit-83 for framing of additional issues. The Trial Court allowed application and framed additional issues. The said issues are reproduced herein below:

1. Whether to the order of defendant No.7 dated 23/3/2017 is क.एकत्री / खुडूस / माळशिरस / सोलापूर a provisions of Prevention of Consolidation and Fragmentation Act are applicable?
2. Whether to the suit property a provision of Prevention of Consolidation and Fragmentation Act are applicable?

5. Mr.Phad, learned Advocate appearing for petitioner/plaintiffs submits that suit is instituted seeking declaration of ownership by way of adverse possession and perpetual injunction. Therefore, issue regarding applicability of Consolidation Act would not arise for determination in suit.

6. Mr. Anil Kupade, learned Advocate appearing for respondents supports impugned order, contending that plaintiffs have raised challenge to order passed by Authorities under Consolidation Act. Therefore, bar under Section 36 would attract.

7. In light of submissions advanced by learned Advocates appearing for respective parties, it is necessary to have reference to Section 36-A and 36-B of Consolidation Act, which state 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.

8. Plain reading of aforesaid provisions would show that jurisdiction of Civil Court is barred to settle, decide or deal with any question which is, under Act, required to be settled, decided or dealt with by State Government or any officer or authority. Further,

no order of any authority shall be questioned in Civil Court. Similarly, if matter involves any issue which is required to be settled or decided by Competent Authority, such issue needs to be referred to Competent Authority for determination.

9. In light of aforesaid provisions, if prayers in suit are considered, apparently plaintiff is seeking declaration of his ownership dehors order dated 23rd March 2017 passed by Competent Authorities under Consolidation Act. Further, plaintiffs are seeking injunction restraining implementation of aforesaid order.

10. *Prima facie*, it can be observed that plaintiff is seeking declaration of his title on basis of adverse possession over suit property and also seeks declaration that order passed by Consolidation Officers is invalid and not binding upon plaintiffs. Similarly, he seeks prohibitory injunction restraining implementation of order passed by Consolidation Officer. In this background, it is possible that bar under Sections 36-A and 36-B would operate to certain extent. However, additional issue framed by Trial Court does not take into consideration exact point of controversy. This Court finds that, looking to provisions under

Sections 36-A and 36-B, Trial Court ought to have framed appropriate issues as to whether jurisdiction of Civil Court is barred in light of Section 36-A of Consolidation Act and whether issues which are required to be settled, decided and dealt with by Competent Authority arise for consideration and require reference in terms of Section 36-B of Consolidation Act. Additional issue framed by Trial Court does not reflect consideration of exact controversy involved in suit.

11. In that view of matter, following order is passed :

ORDER

- (i) Writ Petition is partly allowed.
- (ii) Impugned order dated 17th October 2024 passed by Civil Judge, Senior Division, Malshiras below Exhibit-83 in Regular Civil Suit No. 04 of 2005 is hereby quashed and set aside.
- (iii) Application below Exhibit-83 is restored to its original file in Regular Civil Suit No. 4 of 2005.
- (iv) Civil Judge, Senior Division, Malshiras shall reconsider application below Exhibit-83 and, if necessary, frame issues in light of aforesaid observations.

(S. G. CHAPALGAONKAR, J.)