

**:: ORDER BELOW EXH.30 ::**

Perused the application and say (Exh.31) filed by the plaintiff. Heard both sides. Through this application, the defendants requested for the rejection of plaint vide Order VII, Rule 11 of CPC. According to the defendants, the plaintiff has filed present suit for the declaration of his preferential right to purchase the suit property. He also requested for directions to execute the sale deed of the suit property in his favour. The suit property consist of an area admeasuring 13 R. only. The sale transaction of 13 Gunthe is prohibited as per the section 6 and 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Therefore, the suit is barred by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. and the plaint is required to be rejected. On the other hand the plaintiff submits that the question before this Court is clearly within the purview of jurisdiction of Civil Court. The suit is not barred by the provision of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Therefore, the application may be rejected.

2) Herein, the plaintiff has filed present suit for exercising his right of pre-emption. According to him, he is the adjacent owner of the suit property and he is entitled to purchase the suit property. In spite of that, defendant no.2 sold the suit property to defendant no.1. The area of the suit property consist of 13 Gunthe only. As per sections 7 & 8 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, transfer of fragment is prohibited. However, in my view, only on that count, it cannot be said that the suit for pre-emption is barred. No doubt the transaction in violation of section 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act is void. The Collector can impose penalty for such transaction. However, at this stage, it is difficult to conclude the alleged claim of transfer of the suit

property in favor of the plaintiff will amounts to an act of transfer of a fragment. As per section 36(b) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, question whether sale deed of the suit property will create fragment or not can be referred to the competent authority under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Therefore, at this stage, it cannot be said that the suit is barred by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act.

3) Learned advocate of the defendants placed on record the ratio laid down by the Hon'ble Bombay High Court in the case of Laxman Genu Jagtap (D) by his legal heirs and LRs. V/s. Raghunath Tatyaba Jagtap (D) by LRs. reported in 2016(4) All MR 318. As per the ratio laid down in the said case, question which is required to be settled, decided or deal with by competent authority under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act cannot be entertained by Civil Court. In the said case, the disputed 19 R. land was allotted by the Consolidation Officer to the defendants. The plaintiff was seeking declaration that the said allotment is ultra-virus and he was also seeking injunction to disturb the possession. In the said facts, the Hon'ble Bombay High Court held that the allotment of the land by the Consolidation Officer is as per the powers given to him by the provisions under Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Therefore, the said question cannot be adjudicated by Civil Court. Hence, in my view, the ratio laid down in the said case is not helpful to the plaintiff.

4) Learned advocate of the plaintiff also placed his reliance on the ratio laid down in the case of Shevantabai Maruti Kalhatkar V/s. Ramu Rakhamaji Kalhatkar & Anr. reported in 1999 (3) All MR 231. In the said case, the appellant sold the suit land to the respondent. On the basis of the said sale deed, respondent filed suit for possession. Trial

Court decreed the suit in spite of the objection of the violation of the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. The First Appellate Court allowed the appeal and declared that the sale transaction was void on account of violation of the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. The said order is challenged before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court allowed the appeal. The matter went upto the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the trial Court under section 36-B of the Act referred the question of violation of the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act in the disputed sale transaction to which the competent authority held that the transaction is valid and not in the violation of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. In such circumstances, the Hon'ble Supreme Court held that the bar under section 36-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act is not applicable. In the facts and circumstances of the present case also, whether the sale transaction of the suit property creates fragment or not, can be referred to the competent authority. At this stage it cannot be said that the suit is barred by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. In all these circumstances, in my view, the suit is not barred by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Therefore, the application for the rejection of the plaint cannot be allowed. Hence, I pass the following order,

**:: ORDER ::**

Application is rejected.

**Sd/-**

( S. S. Parave )

Civil Judge Junior Division,  
Gargoti.

Place : Gargoti.

Date : 30/01/2017.

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	:	Mr. S. D. Sarang
Name of Court	:	Court of Civil Judge Junior Division, Gargoti, Tah. - Bhudargad, District - Kolhapur
Date of Dictation	:	30/01/2017
Order signed by the P.O. on	:	30/01/2017
Order uploaded on	:	30/01/2017