

Order Below Exh.1 in R.C.S. no. 84/2012**(Dhanaji Bhauso Kadam V/s. Suresh Bhauso Kadam)**

01. The present suit is filed by plaintiffs against defendants for partition of suit properties. It is a contention of plaintiff that, suit properties gut nos. 525, 594 & 526 are purchased by plaintiffs and defendant nos. 1 to 6 for their joint family. The defendant nos. 1 & 2 have sold their share in gut nos. 525 and 526 to the defendant no.16 by sale deed dated 04/11/2006. The plaintiff further stated that, the sale deed dated 04/11/2006 is against the provision of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. This issue is raised by the plaintiff by filing amendment application at Exh.149 which was allowed and accordingly the plaintiff carried out the amendment. The defendant no.16 has filed his additional written statement on amendment plaint which is at Exh.91. The defendant stated that, the sale deed dated 04/11/2006 is not hit by the provision of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. On this rival contentions of the plaintiff and defendant my Ld. Predecessor has framed additional issue at Exh.79 as “Whether the sale deed dated 04/11/2006 is hit by provision of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ?”

02. At the time of final argument of this suit Ld.Advocate for the defendant submitted that it is essential to refer this additional issue to competent authority as per section 36-A and 36-B of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. On the contrary Ld.Advocate for the plaintiff

submitted that, it is not required to refer this issue to competent authority. This court has jurisdiction to decide this issue.

03. I heard both sides on this point.

04. After perusal of the provisions laid down under section 36-A and 36-B of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 it is clear that the Civil Court has no jurisdiction to settled, decided or dealt with any issue which is required to be decided under this Act.

05. Ld. Advocate for the plaintiff relies upon *Eknath Daval Thete V/s. Ganpat Dagadu Thete, 2016(3) Mh.LJ 735*. In this case Hon'ble Bombay High Court held that, it is not necessary to refer the issue of fragmentation to the competent authority at the first instance on the ground that no such issue was raised by the original defendant no.2 or defendant no.1 in their written statement and there was no dispute about the total area of the plot sold by the original defendant no.1 to the original defendant no.2 and the total balance area left after execution of the sale deed. The trial judge was empowered to render of finding based on admitted facts that, there would be a fragmentation of the land.

06. Ld.Advocate for the plaintiff submitted that, in present suit also there is no dispute regarding the total area of gut nos.525 and 526. There is also no dispute regarding the area sold to the defendant no.16 and the total balance area left after execution of sale deed. The area 15.5 R of gut no. 526 and 0.48 R of gut no. 525 sold to the defendant no. 16 by sale deed dated 04/11/2006. The area sold to the defendant no. 16 is less than standard area fixed for

Sangli District. Therefore, prima facie it is seen that the sale deed is hit by provision of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Hence, On this admitted position this court has right to decide the additional issue regarding fragmentaion.

07. Ld. Advocate for the defendant relies upon ***Bikanrao Shamrao Bibne V/s. Ayubkh Mehbookh and others*** writ petition no. 4615 of 2018. Hon'ble Bombay High Court Nagpur Bench held that, the issue regarding the sale deed hit by the provision of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 is required to refer to competent authority as per the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

08. Ld. Advocate for the defendant submitted that in present suit also the issue involved regarding sale deed dated 4/11/2016 is required to refer to the competent authority as per provision of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

09. I have gone through both citations refereed by Ld. Advocates. In ***Bikanrao Shamrao Bibne V/s. Ayubkh Mehbookh and others*** Hon'ble High court discussed in detail the ratio laid down in ***Eknath Daval Thete V/s. Ganpat Dagadu Thete, 2016(3) Mh.LJ 735***. Honb'le High court stated that, in ***Eknath Daval Thete V/s. Ganpat Dagadu Thete, 2016(3) Mh.LJ 735*** it was not contented before trial court that the issue of fragmentation needs reference to the competent authority under the provision of the Maharashtra

Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Moreover, in that decision the learned judge was not called upon to consider the effect of proviso of section 9 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Therefore, that decision is not consider by Hon'ble high court while giving decision in ***Bikanrao Shamrao Bibne V/s. Ayubkh Mehbookh and others*** and the issue regarding fragmentation is referred to the competent authority.

10. In present suit the plaintiff himself has taken objection that the sale deed dated 04/11/2006 is hit by provision of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The defendant no. 16 denied this fact and stated that, the sale deed dated 04/11/2006 is not hit by provision of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The defendant no. 16 wants to refer this issue to competent authority and the plaintiff denied to refer this issue to the competent authority. Therefore the fact regarding “refer the issue to competent authority” is disputed in the present suit. Hence, ratio laid down in ***Ek Nath Daval Thete V/s. Ganpat Dagadu Thete, 2016(3) Mh.LJ 735*** is not applicable here because in that case it was not contented before trial court that the issue of fragmentation needs reference to the competent authority under the provision of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

11. In present suit there is no dispute regarding the total area of gut nos.525 and 526. There is also no dispute regarding the area sold to the defendant no.16 and the total balance area left after

execution of sale deed. But as held in *Bikanrao Shamrao Bibne V/s. Ayubkh Mehbookh and others*, this admitted fact is not only sufficient reason to not to refer the issue to competent authority. It is also essential to consider the effect and proviso of section 9 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

12. The provision mentioned in section 9 is regarding if a transaction of transfer or partition of land contrary to the provisions of Act then collector has power to collect fine, to regularize that transaction etc. This provision would fall for determination by the competent authority only. The civil court has no jurisdiction to deal with it. Hence, only to decide the issue regarding fragmentation is not sufficient, it is also required to consider the effect and implementation of section 9 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and that power is vested only with the competent authority and not with the civil court.

13. In present suit also it is not sufficient to decide only the issue i.e. "Whether the sale deed dated 04/11/2006 is hit by provision of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ?" but it is also essential to consider effect and implementation of section 9 of the Act. Hence, this issue is required to be refer to the competent authority. Therefore, I pass the following order-

ORDER

1. The issue "Whether the sale deed dated 04/11/2006 is

hit by provision of The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ?” is refer to the competent authority i.e. collector of Sangli District.

2. The competent authority is directed to answer the reference and remit its finding to this court within 3 months of receiving the reference.

3. The present suit is stayed as per section 36-B till the receiving the reference from the competent authority.

4. Both parties to take note.

Date:- 03/08/2022

(P.R.Sabnis)
Jt.C.J.J.D.Kadegaon