

**ORDER BELOW EXH.22 IN R.C.S.NO.122/2014**

Defendant no.1 has made present application under section 9A of the Code of Civil Procedure and prayed for dismissal of the suit on the ground that, this court has no jurisdiction to try and entertain it.

2. It is contended by defendant no.1 that, plaintiffs have pleaded that they are owners of suit property Gat No.593, which is part and parcel of Gat No.1384. They have also pleaded that, they have filed an appeal before settlement commissioner against false consolidation of the suit property. On the basis of said pleading made by plaintiffs, defendant no.1 has contended that, as the Issue regarding the suit property is pending before Settlement Commissioner, this court has no jurisdiction to try and entertain the suit as per section 36A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

3. Plaintiffs have contested the application by filing their say below Exh.25. They have averred that, they have instituted the suit for declaration as to ownership of the suit property and injunction that defendant no.1 should not disturb their right to way to the suit property. Their prayer is of civil nature. Plaintiffs have not challenged order of consolidation in the suit. Therefore, the court has jurisdiction to decide the suit. Hence, they prayed for rejection of the application.

4. Before deciding merit of the application, it is necessary

to make clear that, though defendant no.1 has titled the application under section 9A of the Code of Civil Procedure, he has actually challenged jurisdiction of the court under section 36A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Therefore mandatory requirements to entertain an application filed below section 9A of the Code of Civil Procedure are not required to be followed.

5. Heard learned Advocates of both parties. Perused record of the proceedings. Defendant no.1 has challenged jurisdiction of the court mainly on the ground that, plaintiffs have preferred an appeal before Settlement Commissioner regarding the suit property and challenged the consolidation. Therefore, as per section 36A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 jurisdiction of Civil court is barred.

6. After perusal of the suit plaint, it is seen that plaintiffs have instituted the suit for declaration that, they are owners of 5 R land out of Gat No.1384. They have alleged that, defendant no.1 has claimed his right and interest on said 5R land on the basis of consolidation scheme. They have further alleged that, defendant no.1 is obstructing their way to approach the suit property. Hence, with prayer of declaration they have also prayed for injunction against defendant no.1.

7. Plaintiffs have produced order of the Settlement Commissioner dated 25.04.2016, whereby their application is allowed. Therefore, the issue raised by defendant no.1 that, plaintiffs have

initiated proceeding before Settlement Commissioner regarding the suit property and hence, present suit is barred by section 36A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, requires no consideration. Considering order of Settlement Commissioner produced by plaintiffs, as on today there is no application or appeal pending before the Settlement Commissioner regarding the suit property. Moreover, declaration of ownership can be decided only by the Civil Court. Section 36 B of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 says that, "if any suit instituted in any Civil Court or Mamlatdar's Court involves any issues which are required to be settled, decide or dealt with by any Authority competent to settle, decide or deal with and after decision it is communicated to the Civil court, then the Civil Court shall disposed off the suit in accordance with the procedure applicable thereto." In view of this provision, no doubt initially plaintiffs have approached to the Settlement Commissioner. However, concern application has been decided and order passed by Settlement Commissioner is communicated to this Court by plaintiffs. Prayer of plaintiffs is purely of civil nature and can be decided by Civil Court. Therefore, this court has jurisdiction to try and entertain the suit. Hence, the order.

### **ORDER**

1. Application stands rejected.
2. No order as to costs.

Phaltan  
Date :- 15.03.2018

( S.V. Nikam,)  
Civil Judge Jr.Dn. Phaltan