

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

**SECOND APPEAL NO.802 OF 2016**

Ananda Bhimrao Mane & Ors. .... Appellants  
V/s.  
Ananda Piraji Narake & Anr. .... Respondents

Mr. Abhijit M. Adagule for the Appellants.

Mr. Shrinivas S. Patwardhan for Respondent No.1.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 26<sup>TH</sup> MARCH, 2018.**

**P.C. :**

1. Heard Mr. Adagule, learned counsel for the Appellants, and Mr. Patwardhan, learned counsel for Respondent No.1.

2. It is pointed out by learned counsel for the Appellants that, earlier also the predecessor of Respondent No.1 has filed a Suit, in which the issue of maintainability of the Suit was considered and decided against Respondent No.1. Now, the fresh Suit is filed on the basis of implementation of the Consolidation Scheme.

3. In my considered opinion, though both the Courts below have held the Suit to be maintainable, but, having regard to the finding recorded in

the earlier Suit relating to the title of Respondent No.1 over the suit land on the basis of the 'Sale-Deed', as substantial questions of law relating to the present Suit being barred by the principle of *res judicata* and the issue with regard to applicability of the provisions of Sections 24 and 28 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, being raised, the Appeal is admitted on the following substantial questions of law :-

- (i) *Whether the Suit filed by the Respondents is barred by the principle of res judicata?*
- (ii) *Whether the 'Certificate' issued under Section 24 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, will grant title to the Respondents, when already there is finding in the earlier Suit about the failure of Respondent No.1 to establish the title to the suit land as 'owner'?*
- (iii) *Whether the provisions of Sections 24 and 28 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, can confer any title to a person, who failed to prove his title over the disputed property?*

4. It is pointed out by learned counsel for the Appellants that, during the pendency of the Appeal, there was stay to the execution of the impugned Judgment and Decree of the Trial Court.

5. Therefore, now, in view of the admission of the Appeal, the same order of stay is extended till the decision of the Appeal.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**