

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5741 OF 2023

Akbarsaheb Amirsahab Kokani (since deceased)
through legal heirs Jilani Akbar Kokani and Ors. .. Petitioners

Versus

Gulamgous Amirsahab Kokani (since deceased)
through heirs and legal representatives and Ors. .. Respondents

WITH

WRIT PETITION NO.5740 OF 2023

WITH

WRIT PETITION NO.9227 OF 2022

WITH

INTERIM APPLICATION NO.30205 OF 2022

IN

WRIT PETITION NO.9227 OF 2022

WITH

INTERIM APPLICATION NO.30204 OF 2022

IN

WRIT PETITION NO.9227 OF 2022

WITH

INTERIM APPLICATION NO.30203 OF 2022

IN

WRIT PETITION NO.9227 OF 2022

WITH

WRIT PETITION NO.9234 OF 2022

WITH

INTERIM APPLICATION NO.30206 OF 2022

IN

WRIT PETITION NO.9234 OF 2022

WITH

INTERIM APPLICATION NO.30207 OF 2022

IN

WRIT PETITION NO.9234 OF 2022

WITH

INTERIM APPLICATION NO.30208 OF 2022

IN

WRIT PETITION NO.9234 OF 2022

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- Mr. A. S. Khandeparkar, Senior Advocate a/w. P. A. Sharma, Mr. Saurabh Mittal and Apoorva Khandeparkar, Advocates for Petitioners in all Writ Petitions.

- Mr. M. M. Chaudhari a/w. S. K. Atique U. Rehman a/w. Mr. Kalim Tamboli, Advocates for Respondent Nos.8-1 and 8-2 and Respondent Nos.8-2, (1), (2), (3), (4) and (5) in Writ Petition No.9234 of 2022 and in Writ Petition No.9227 of 2022.
- Mr. R. D. Soni i./by Ram and Co., Advocate for Respondent Nos.10A, 10B, 10C and 11A, 11B, 11C-2 in Interim Applications.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 06, 2024

P.C.:

1. Heard Mr. Khandeparkar, learned Senior Advocate for Petitioners in all Writ Petitions, Mr. Chaudhari, learned Advocate for for Respondent Nos.8-1 and 8-2 and Respondent Nos.8-2, (1), (2), (3), (4) and (5) in Writ Petition No.9234 of 2022 and in Writ Petition No.9227 of 2022 and Mr. Soni, learned Advocate for the Intervenors.

2. The present proceedings before me incidentally challenge order dated 31.01.2023 which is an interlocutory order directing compliance of Execution proceedings. The order dated 31.01.2023 is the subject matter of Writ Petition No.5740 of 2023 and Writ Petition No.5741 of 2023. There are two other companion Writ Petitions wherein intervention of the Intervenor is opposed by the same Petitioners. Intervenors, admittedly are purchasers of portions of the suit property from the original Judgment Debtor No.4.

3. With the able assistance of Mr. Khandeparkar and duly supported by Mr. Chaudhari, I have perused the order dated 31.01.2023. It is seen that the said order is passed pursuant to

remand order dated 15.02.2021 passed by this Court in Writ Petition No.5164 of 2020 and companion Writ Petition. The impugned order is passed in execution proceedings. Both the learned Advocates appearing for the parties are *ad-idem* that execution of the preliminary decree has not only commenced but after drawing up the details of the preliminary decree, precept is prepared and already sent to the Collector, Nashik for effecting the divisions as far back as on 31.10.2001.

4. It is seen that the said precept at page No.137 had 61 annexures appended thereto. It is seen that considering that no steps were taken thereafter for 20 years for demarcation and devolution of the property, on the parties approached the Competent Authority upon which further directions were given to the parties to co-operate with the Tahsildar, Nashik and complete the exercise of execution. It is seen that Judgment Debtor No.4 during his life time had already sold his share in the undivided property to the intervenors represented by Mr. Soni. By virtue of the impugned order, the learned Executing Court has held that in the above backdrop, the legal representatives of Judgment Debtor No.4 would only therefore be entitled to any residual property coming to the share of Judgment Debtor No.4 out of the suit properties and not the share of the property which he has already parted with in favour of the intervenors. Mr. Khandeparkar,

infact accepts this position, but insists that even thereafter, the balance properties should come to the legal heirs.

5. Intevenors have sought impleadment by filing Interim Application namely Interim Application No.30203 of 2022, Interim Application No.30204 of 2022 and Interim Application No.30205 of 2022 in Writ Petition No.9227 of 2022 and Interim Application No.30206 of 2022, Interim Application No.30207 of 2022 and Interim Application No.30208 of 2022 in Writ Petition No.9234 of 2022. In view of the Petitioners not disputing the aforesaid position of the rights of the intervenors in respect of their accrued rights through Judgment Debtor No.4, the aforementioned three Interim Applications stand allowed and disposed and Intervenors are directed to be made impleaded as necessary party in the present Petitions. Amendment is permitted to be carried out within a period of two weeks from today. Re-verification stands dispensed with. Intevenors shall be nomenclatured as Respondent Nos.12, 13 and 14 in Writ Petition No.9227 of 2022 and Writ Petition No.9234 of 2022.

6. The issue raised by Mr. Khandeparkar is with respect to implementation of the precepts which have been sent. The implementation and resultantly execution of the decree can only take place after the precepts are considered by the Collector / Collector's office and after hearing the parties, demarcation of shares is effected.

For this very exercise to be undertaken the order dated 31.01.2023 has been precisely passed. The directions contained in paragraph Nos.10 and 11 of the said order resonate the aforementioned exercise though not in so many words. It is true that Collector, Nashik is seized with the issue of effecting the partition according to the precepts which have been received by his office, however the said exercise will have to be necessarily undertaken by hearing and calling upon all concerned parties with respect to the precepts governing their rights and shares before the Executing Court.

7. I have impressed upon Mr. Khandeparkar and Mr. Soni that valuable time has been lost in keeping the present Petition pending and both the parties should now cooperate with the Collector, Nashik for effecting partition according to the decree passed by the Trial Court and considered by the Executing Court. Both the learned Advocates have taken appropriate instructions from their respective clients and have agreed that both parties have no-objection if the exercise of effecting the partition of shares is carried out after hearing the parties considering that substantial time has lapsed after the precepts have been sent to the Collector.

8. It is necessarily required that both parties are heard in order to avoid any further multifarious litigation between the parties and that is precisely why after the precepts are received the concerned

parties are also called for confirming the details as stated in the precepts on the basis of the decree passed by the Trial Court and directions passed by the Executing Court. In this case admittedly much time has lapsed after the precepts were sent in the year 2001. Revenue record and any other documentary evidence will have to be therefore shown and relied upon for effecting partition. / division of shares.

9. After the parties produce the requisite evidence the learned Collector is directed by this Court to effect partition / division according to the precepts after hearing the parties and if there is any dispute, the Collector shall pass appropriate orders for the parties to take up the matter with the Executing Court / Competent Authority in accordance with law.

10. In view of the above observations and findings as also observations returned in the order dated 31.01.2023 by the learned Trial Court to effect partition in respect of the Suit properties, the order dated 31.01.2023 is sustained.

11. It appears that all parties may not be represented before me. Collector, Nashik hence shall issue notice to all concerned parties including the intervenors for hearing on the precepts that have been received within two weeks from today. If names and addresses of all parties are not available, the parties before me have agreed to provide

the same to the Collector, Nashik who shall take the same on record and issue the notices. Once notices are issued, Collector Nashik is directed to give hearing to all concerned parties and after hearing the parties undertake the exercise of effecting partition / division / demarcation strictly in accordance with the preliminary decree and law. The aforesaid exercise shall be carried out by the Collector within 3 months from the date of issuance of notice to all parties.

12. All contentions of the parties are expressly kept open. In view of the above, no further directions are required to be given.

13. Writ Petition No.5740 of 2023 and Writ Petition No.5741 of 2023 therefore stand disposed in view of the above directions.

14. Writ Petition No.9227 of 2022 and Writ Petition No.9234 of 2022 also stand disposed in view of the Intervenor having been allowed to join the proceedings by this order.

15. In view of the above order, Interim Application No.30203 of 2022, Interim Application No.30204 of 2022, Interim Application No.30205 of 2022, Interim Application No.30206 of 2022, Interim Application No.30207 of 2022 and Interim Application No.30208 of 2022 also stand disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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