

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO. 2895 OF 1992

Samuel John Amolik,
Aged 62 years, Pensioner,
R/o. Maliwada, Deokar Galli,
Ahmednagar.

... Petitioner

VERSUS

1. Somnath Ballappa Bhaibhang
since deceased L.Rs.
- 1-A. Shashikant Somnath Bhaybhang
Aged about 44 years, Agriculturist
R/o Station Road, opposite Post Office,
War No. 6, Shrirampur.
- 1-B. Mrs. Lata Shamsunder Kesrale
Aged 48 years, Household work
Chikhalwadi, Nanded.
- 1-C. Mrs. Pushpa Jaykumar Divate
Age 46 years, Household work,
Datta Mandir Road,
Nashik Road.
- 1-D. Mrs. Mangala Laxmikant Dhake
Aged 42 years, Household work,
R/o. Aadgaon Taluka, Akot,
Dist. Akola.
- 1-E. Mrs. Alka Ravindra Sakhare,
Aged 40 years, Household work
R/o. Vijapur, Dist. Aurangabad.
- 1-F. Mrs. Kallika Vishwanath Danadane,
Aged 38 years, Household work,
Lingayat Colony, Poona Road,
Nashik.

- 1-G. Kalpana Uday Shete,
Aged 35 years, Household work,
R/o. Lohi Tal. Darwa, Dist. Buldhana.
2. Smt. Sushilabai D/o Bapu Amolik.
3. Smt. Kamal D/o Bapu Amolik.
4. Smt. Pramila D/o Bapu Amolik,

All Adult, doing household work,
R/o. 424, New Nana Peth,
Pune – 2.
5. Balu Ravaji Amolik.
6. Shantawan Ravaji Amolik.
7. Madhukar Ravaji Amolik.

All Adults, Agriculturist,
R/o. Ainatpur village, under Belapur P.O. Taluka
Shrirampur, Dist. Ahmednagar.
8. Smt. Snehlata w/o Dinkar Pawar,
Aged 52 years, Household work,
R/o. 230, South Devalali, Air Force Station,
Devlali Cantonment, Nashik.
9. Smt. Sharlet w/o Arun Pakhare,
Aged about 47 years, Household,
r/o. 4/1 A. C. Power House,
Devalali Camp, Nashik.
10. State of Maharashtra,
Through Secretary,
Revenue and Forests Department,
Mantralaya, Bombay – 400 32.
11. Commissioner/Additional Commissioner,
Nashik Revenue Division, Nashik.
12. Collector,
Ahmednagar.

13. Tahsildar,
of Shrirampur,
District Ahmednagar. ... Respondents

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Mr H. D. Deshmukh, Advocate for petitioner
Mr V. S. Bedre, Advocate for respondent No. 1-A
Mr Hemant Surve, Advocate for respondent No. 9
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CORAM : **N. W. SAMBRE, J.**

DATE : **3RD December, 2015.**

ORAL JUDGMENT:

. The petitioner, whose father was a decree holder in suit for partition bearing R.C.S. No. 350 of 1973 upheld in Second Appeal No. 630 of 1980 on 20th June, 1986 has questioned the order dt. 16th September, 1992 passed by the Minister for State (Revenue) whereby the Minister has set aside the order passed by the DILR, Ahmednagar pursuant to execution of the partition decree, the order passed by the Collector upholding the order of Tahsildar and the order of Commissioner dismissing the appeal preferred by the respondent No. 1 and directed the authorities to effect partition pursuant to the orders of the High Court in Second Appeal No. 630 of 1980 and has also ordered half share be given to the heirs of late Ananda out of the share of present petitioner.

2. The brief facts as are necessary for deciding the petition are as under :

One Samuel and Bapu both Cristian were from the family of Jayram. Property Survey No. 66, Gut No. 24 of Village Ainatpur, Tq. Shrirampur, Dist. Ahmednagar was originally owned by Jayram, who died in 1905, leaving behind Muktabai, his widow who died in 1931.

3. The couple was blessed with three children namely Bapu defendant No. 1 to the suit for partition, John and Ananda.

4. Ananda died in 1961 issue-less and John predeceased Ananda in 1941. Sushila, widow of John died in 1972 leaving behind Samuel, the plaintiff to the suit who holds the decree for partition.

5. The decree for partition grants plaintiff of three annas share from suit land of the original defendant No. 2 and Collector was required to take appropriate steps to that effect and has also ordered the inquiry as regards *mesne* profit.

6. The said judgment was upheld by this Court in Second Appeal No. 630 of 1980 on 20th June, 1986 with following observations.

“While effecting the partition, the Collector may, so far as it is reasonably practicable so to do, allot the land from the Western side to the share of the plaintiff.”

7. Pursuant to the said observations, the authority i.e. Tahsildar effected the partition by metes and bounds by drawing appropriate map to that effect and directed respondent No. 1 to hand over the possession pursuant to the said map drawn by the revenue authorities. As on the area to be given to the share of the petitioner standing crops were there, respondent No. 1 – Somnath furnished an undertaking on 17th January, 1990 handing over possession of the property symbolically however, mentioned that actual possession will be handed over after removing his belongings and standing crops. Having secured the lien period pursuant to the above referred statement and accommodation granted by the petitioner, he preferred a revision before the Collector, Ahmednagar stating that before effecting the partition by the revenue authorities he was never heard or put to notice. The Collector rejected the said contention by an order dt. 29th March, 1990 by observing that respondent No. 1 was put to notice by the surveyor from the office of District Inspector of Land Records who prepared a panchanama and proposed partition of the property considering the type of the soil. Respondent No. 1 has since not raised any objection to the same, he has accepted the partition

effected by the revenue authorities. An appeal to the Commissioner with the similar reasons resulted in dismissal, respondent No. 1 then chose to prefer a revision before the State Government (Minister for Revenue), who allowed the revision by an order dt. 16th September, 1992. As such, petition by the decree holder, who is striving hard for his share in the ancestral property since last more than 40 years.

8. The learned Minister in his order has observed thus:

“ORDER

All Lower Courts decisions are cancelled. The plan prepared by DILR Ahmednagar on which Partition was to be effected, to hand over possession to respondent No. 1 is set aside. Appellants appeal is allowed. The partition be effected in the light of observations made by Hon'ble High Court in Appeal No. 630/80. The heirs of Late Ananda, be given share of the partitioned property i.e. out of the share of Respondent No. 1.

No order as to costs.

Parties be informed accordingly.

Sd/-

Bombay.

(Harshwardhan Deshmukh)

16-09-92.

State Minister (Revenue)”

9. While questioning the legality of the order passed by learned Minister, the learned counsel for petitioner would urge that the

learned Minister has travelled beyond the decree and has upset the shares. He would then urge that the revenue Minister has misinterpreted the findings recorded by the High Court in Second Appeal as findings consist of wordings “as far as possible” and are not in mandatory nature. He would then urge that respondent No. 1 having already handed over symbolic possession to the petitioner and upon an undertaking that he will hand over the physical possession on removal of his belongings it was not open for respondent No. 1 to prefer the proceedings in question and stall the execution of the decree. According to him, the conduct of respondent No. 1 is *mala fide* and order impugned is not sustainable.

10. Mr Bedre, learned counsel for respondent No. 1-A would urge that the Minister's order is in tune with the observations made by the High Court in Second Appeal wherein the High Court has observed that as far as possible plaintiff will be entitled for his share from the western side. According to him, the order is just and proper and the petition is liable to be dismissed.

11. Having bestowed my thoughts to the submissions made, it is to be noted that the High Court while dismissing the Second Appeal preferred by respondent No. 1 has observed that, so far as it is reasonably practicable so to do, the land from the Western side be allotted to the share of the plaintiff. The bare perusal of the said

observations makes it clear that practical approach is required to have by the revenue authorities while allotting the land to the original plaintiff and as far as possible be allotted from the western side in his favour. The perusal of the order passed by the Collector and the Commissioner at the behest of respondent No. 1 depicts that considering the nature of soil in the suit land, the DILR and the revenue authorities have effected the partition. While effecting partition, respondent No. 1 though was put to notice has not raised any objection and as such has accepted the partition effected. Upon perusal of an undertaking furnished by him on 17th January, 1990 before Tahsildar, it is amply clear that respondent No. 1 was not having any objection to the partition that was effected by the revenue authorities.

12. Respondent No. 1 having lost in the civil suit, at all forums, was duty bound to honour the decree but by taking recourse to the proceedings *in spite* of furnishing undertaking on 17th January, 1990 to the Tahsildar and handing over symbolic possession to the petitioner has approached revenue authorities on flimsy, non-existent grounds so as to delay the partition and enjoy the fruits of the property with a *mala fide* approach.

13. Upon perusal of the order passed by the learned Minister,

it is *ex facie* clear that the learned Minister has misinterpreted the findings recorded by the Hon'ble High Court while deciding the Second Appeal as the findings recorded in the second appeal were not mandatory and the discretion vested in the revenue authorities while effecting partition in my opinion has rightly exercised the discretion having regard to the quality of land of which partition was to be effected.

14. The learned Minister while passing the order impugned has travelled and made observations beyond the decree passed by the learned trial Court to which the Minister has no jurisdiction. The Minister was required to restrict himself to the extent of issue of entitlement of respondent No. 1 to notice or hearing before effecting the actual partition and not as regards issue of L.Rs. or the entitlement to the extent of half share.

15. In my opinion, as such, the writ petition is liable to be allowed. Hence for the reasons stated herein above, Rule made absolute in terms of prayer clause 'B' of the petition.

16. Before parting with the case, this Court is required to consider the conduct of respondent No. 1 as he has delayed the execution of the decree as is apparent from his conduct narrated

herein above. Such approach on the part of respondent No. 1 is *mala fide* and in my opinion, the said conduct has denied the fruits of decree in favour of the petitioner for last more than 40 years.

17. As such respondent No. 1 herein, in my opinion, must pay costs of Rs. 10,000/- (Rupees Ten Thousand) to the petitioner within a period of ten weeks from today. If the costs is not paid by respondent No. 1, petitioner will be entitled to recover the same in accordance with the provisions of Code of Civil Procedure.

18. The Collector, Ahmednagar is directed to forthwith effect the partition and send compliance report immediately. The inquiry into the *mesne* profit, if any, is expedited.

Petition stands disposed of.

[N. W. SAMBRE]
JUDGE

sgp