

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

WRIT PETITION NO.1545 OF 2014

Daga s/o Shankar Ghule,
Age: 54 years, Occ: Agri.,
R/o. Nimbhora, Tq. Nizar,
Dist. Tapi & ors

...Petitioners

versus

Revabai w/o Raman Kadam,
Age: 33 years, Occ: Agri.,
R/o. Kalmadi, Tq. Shahada,
Dist. Nandurbar & anr

...Respondents

.....
Mr. Girish Rane, Advocate h/f Mr. P.N. Kutti, Advocate for petitioners
Mr. P.V. Barde, Advocate h/f Mr. N.L. Choudhary, Advocate for
respondent Nos. 1 and 2
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CORAM : N.W. SAMBRE, J.

DATE : 4th DECEMBER, 2015

ORAL ORDER :

In Regular Darkhast No. 6 of 2011 arising out of the decree passed in Civil Appeal Nos. 2 of 1990 and 3 of 1990 below Exhibit-61 – an application preferred by Decree Holder for referring the matter to the Collector for possession, learned Civil Judge, Junior Division, Taloda passed an order on 16/08/2013 ordering referring of the matter in question to the Collector, Dhule/Nandurbar for partitioning the immovable property as per decree.

2. By decree, the property as is mentioned in Schedule attached to plaint was ordered to be handed over to the plaintiff.

3. What is apparent from considerations as are reflected in the order impugned that learned trial Court, perhaps, has taken into account the decree that was passed is for partition by learned trial Court, however, the decree in Civil Appeal Nos. 2 of 1990 and 3 of 1990 speaks of handing over of possession of the entire suit property to the plaintiff.

4. Apart from above, it is required to be noted that for handing over possession of the property in question, to what extent, the assistance of the Collector/Revenue authorities will be necessary is also an issue which was addressed by respective Counsel.

5. It is required to be taken note of the fact that the appellate Court since has ordered handing over of possession simplicitor to the plaintiff by defendant Nos. 1 and 2 of the suit property, the order of effecting partition through Collector was uncalled for. Similar order is also noticed below Exhibit-50 dated 23/07/2013, which also speaks of preferring the matter to the revenue authorities for partition.

6. As both these orders i.e. order dated 23/07/2013 passed below Exhibit-50 and dated 16/08/2013 below Exhibit-61 are set aside, it is ordered that both these applications i.e. Exhibits-50 and 61 be decided afresh, taking into account the judgment delivered by lower appellate Court in Civil Appeal Nos. 2 of 1990 and 3 of 1990.

7. The hearing of both these applications are expedited. The Executing Court is expected of, to decide both the applications within period of eight weeks from communication of the order.

8. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]