

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

CIVIL REVISION APPLICATION NO.213 OF 2014

Madhukar s/o Wamanrao Chidrawar ... APPLICANT

VERSUS

Shankar s/o Abarao Chidrawar ... RESPONDENT

.....
Shri P.N. Kalani, Advocate for applicant
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 8th January, 2015.

ORAL ORDER :

1. Heard counsel for the applicant. He is submitting that the trial Court has proceeded with the execution of Regular Darkhast No.73/2013 and rejected the application of the Judgment Debtor raising objection that the execution petition was not maintainable without there being final decree. The learned counsel is submitting that the decree passed by the trial Court relates to partition and the same cannot be executed unless the final decree is drawn and Commissioner is appointed for effecting the actual partition. He is relying on the case of

Shivshankar Birajsing Pardeshi, died L.Rs. Gokulsing & ors. Vs. Chagansing Mansing Pardeshi (Civil Revision Application No.1 of 2014) and the case of Shobhabai wd/o Manik Teltumbade Vs. Dadaji s/o Jairamji Waghmare, reported in [2014(1) Mh.L.J. 542] to support his argument that when the matter relates to partition, there is necessity to draw final decree and there is also necessity to appoint Commissioner to effect partition and then only the decree can be executed.

2. The rulings relied on by the counsel for applicant have their own facts. If the facts of the present matter are perused, the Regular Civil Suit No.606 of 1996 was filed for recovery of possession by partition of specific portion as mentioned in the plaint which was the suit property. The judgment shows further details regarding purchase of plaintiff of 1/4th share in house concerned with boundaries specified including that defendants were to the south. The final order of the judgment reads as under :

" The suit is hereby decreed with costs.

The plaintiff is entitled for recovery of possession by partition of an area of 3 ft., 5 inches x 16 ft. 5 inches from northern side from house No.418/ land old number 838, within following boundaries - East - Plaintiffs own residential house, West - Municipal Road, South - Defendant remaining portion from the same house, North - House of Saraf, situated at Gujari - Bazar, Parbhani, within the period of one month from the date of order. If the

defendant fails to hand over the possession of the suit property to the plaintiff within the period, then the plaintiff is entitled to get the possession through Court.

Decree be drawn up accordingly."

3. Relevant part of Order XX Rule 18 (2) reads as under :

"18. Decree in suit for partition of property or separate possession of share therein:-

Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then, --

(1)

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties, interested in the property and giving such further directions as may be required."

4. It is clear that the Court may, if the partition or separation cannot be conveniently made without further enquiry, pass a preliminary decree. This shows that, if it is so convenient, the Court can pass even final decree for a specific portion on partition. This appears to have been done in the present matter. The decree passed has been maintained in higher Courts. The decree passed is for specific, identified suit property. Thus, the grievance that there should be a separate final decree and

Commissioner should be appointed, has no substance and on the face of it, I do not find any error with the order passed by the trial Court in the execution. There is no illegality or irregularity shown in the impugned order. The admission of the revision is declined. Civil Revision Application stands rejected.

(A.I.S. CHEEMA, J.)

fmp/cra213.14