

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7073 OF 2014

Hanumant S. Jagtap and ors. .. Petitioners
vs.
Chandrakant S. Jagtap and ors. .. Respondents

Mr. P.K. Hushing for the Petitioners.

CORAM : M. S. SONAK, J.
DATE : 1 April, 2015.

P.C. :-

1] This petition challenges the order dated 3 January 2012 made by the I/c. Joint Civil Judge, Junior Division, Saswad, referring execution of the partition decree to the the District Collector for further execution in terms of Section 54 of the Code of Civil Procedure, 1908 (CPC).

2] In making the impugned order, learned Joint Civil Judge has relied upon the decision of this Court in case of *Annasaheb Rajaram Nagane and anr. vs Rajaram Maruti Nagane and ors - AIR 2001 Bom. 303*, wherein the general directions have been issued in the matter of referring decree for partition to the Collector for the purposes of execution.

3] Mr. P.K. Hushing, learned counsel for the petitioner, however, submitted that the course adopted by the learned Joint Civil Judge is contrary to the course commended by the Gujarat High Court in case of *Ragha alias Rugnath Mahadev vs. Ramji Bava - AIR 1974 Guj 86*, in which it is observed that the partition which is intended to be left to the Collector would be one which has some impact on the revenue and revenue records of the State. This will be in cases where a decree for partition of a specified share from each one or more estates paying revenue to the Government is passed by the Court. However, in a situation where a share is not to be separated from each of one or more of the survey numbers, there is no necessity to refer the partition of the entire survey number assessed to the payment of revenue to Government, for execution by the Collector.

4] Mr. P.K. Hushing points out that the aforesaid decision was also not taken into consideration by this Court in case of *Annasaheb Rajaram Nagane (supra)*.

5] In light of the decision of this Court in case of *Annasaheb Rajaram Nagane (supra)*, no fault can be found with the impugned order. The circumstance that this Court in case of *Annasaheb*

Rajaram Nagane (supra), may have not considered the decision of the Gujarat High Court in case of *Ragha alias Rugnath Mahadev (supra)* does not in any manner, affect its precedential value.

6] Accordingly, there is no necessity to entertain the present petition. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

dinesh