

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7808 OF 2014

Shri. Popat alias Balasaheb Shamrao Kadam .. Petitioner

Versus

Shri. Bhaskar Shamrao Kadam and another .. Respondents

Shri. Nitin P. Dalvi i/by Shri. Pritesh K. Bohade, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 04th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 05.03.2014 passed by the Learned 5th Joint Civil Judge, Junior Division, Malegaon, by which order the application Exh.108 filed in the final decree proceedings being F. D. No.1 of 1995 came to be rejected.

2. The suit in question being one for partition was decreed in the year 1994. The decree in so far as agricultural lands are concerned was sent to the Collector for partition. In terms of the reference made to the Collector the Tahsildar, Malegaon prepared a statement as to the manner on which the properties were to be partitioned between the Plaintiff and the Defendant. The said statement is part of the order dated 10.10.2005

passed by the Tahsildar. It appears that pursuant to the said statement which was prepared by the Tahsildar, Malegaon the agricultural lands have already been partitioned and parties are put in possession of the respective lands and the said lands are also entered in their name. The statement which appears in the said order dated 10.10.2005 shows the manner in which the agricultural lands have been partitioned. It is long thereafter that the instant application is filed by the Plaintiff on 05.07.2013 seeking a host of reliefs which have been referred to by the Executing Court in the opening paragraph of the impugned order. The said reliefs are in respect of Well, partition of the properties and share in the sale proceeds. The Executing Court initially rejected the said application on the ground that allowing the said application Exh.108 would amount to the Executing Court going behind or beyond the decree. The said order passed by the Executing Court was challenged by way of a Writ Petition being Writ Petition No.8625 of 2012 in this Court. A Learned Single Judge of this Court directed the Petitioner to file a Review Petition. It is on the basis of the said liberty granted that the instant application Exh.108 has been filed for the reliefs which have been adverted to in the earlier part of this order. A hue and cry has been raised on behalf of the Petitioner on the ground that the partition is effected in a manner so as to leave the Petitioner/original Plaintiff without any Well. In so far as the property

which has come to the share is concerned, a case is sought to be propounded by the Petitioner that in the absence of water, the agricultural lands would become barren and uncultivable. The order passed by the Tahsildar refers to the process which was undergone prior to preparing the statement of partition. The order records that a visit to the site was made along with the parties and thereafter partition was proposed as per the desire of the parties and a map was accordingly prepared which was accepted by the parties. A reading of the instant application Exh.108 discloses that in Gat No.84/B, there is a Well as also in Gat No.298/A, 81 and 79. In so far as Gat No.298/A is concerned, part of it has come to the share of the Plaintiff. In so far as the Gat No.84/B is concerned, the same has also come to the share of the Plaintiff. As indicated above, all the four lands i.e. Gat No.84/B, 298/A, 81 and 79 have ancestral Wells situated in them. It is therefore impossible to believe that whilst partitioning the suit properties all the Wells have gone to the share of the Defendants and the Plaintiff is without any Well. That apart, as indicated above, the Tahsildar has partitioned the properties after following a modicum of procedure which has been reflected in his order dated 10.10.2005, wherein the parties have actively participated. As indicated above, the Executing Court has rejected the said application on the ground that granting the said application would amount to the Executing Court going behind the decree.

As indicated above, the instant application Exh.108 has been filed for multifarious reliefs. The said reliefs have been sought as if the Executing Court is the Court of the first instance. In my view, the order passed by the Executing Court rejecting the application Exh.108 on the grounds which are appearing in the impugned order cannot be found fault with. Apart from the reasons which are mentioned by this Court the fact remains that allowing application Exh.108 would undoubtedly result in the Executing Court going behind the decree which is impermissible. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]