

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

**SECOND APPEAL NO.717 OF 2011
WITH
CIVIL APPLICATION NO.1658 OF 2011**

Suryakant S. Salve & Ors.

.. Appellants

Versus

Bapu Kalu Salve

(Since deceased through his Lrs)

1A] Mahadev Bapu Salve & Ors.

.. Respondents

....

Mr.Sanjay Kshirsagar, Advocate for the Appellants.

Mr.S.A. Sawant with Mr.Ketan Joshi, Advocate for the Respondents.

....

CORAM : R.K. DESHPANDE, J.

DATED : JUNE 23, 2015

P.C.

The trial Court passed a decree for partition and separate possession in Regular Civil Suit No.184 of 2001 on 30th September, 2006. The plaintiff is held entitled to half share in the suit property and the defendants are perpetually restrained from obstructing peaceful possession of the plaintiff in the suit property. In Civil Appeal No.76 of 2007, the Appellate Court has confirmed the decision of the trial Court and dismissed the Appeal on 27th June, 2011. The defendants are before this Court in the Second Appeal.

2 The question involved before the Courts below was whether the lands re-granted under the provisions of the Bombay Inferior Villages Watans Abolition Act, 1958 (hereinafter referred to as “the Act”, for short) become a partiable estate? Relying upon the decisions of the Apex Court and of this Court, it is held that Mahar Vatan lands which are re-granted become partiable estate. On this aspect, there is no substantial question of law which arises for consideration by this Court.

3 The learned counsel for the appellant has urged relying upon the provisions of Sub-section (4) of Section 5 of the said Act that the occupancy of the Mahar Vatan land re-granted under Sub-section (1) shall not be transferable or partiable by metes and bounds without the previous sanction of the Collector and except on payment of such amount, as the State Government may, by general or special order determine. He submits that this provisions did not fall for consideration either of the Apex Court or of this Court in the decisions relied upon by the Courts below. Hence, the question need to be considered by this Court. Hence, Admitted on the following substantial question of law :

Whether the decree passed by the trial Court becomes enforceable in the absence of previous sanction of the Collector and the payment of such amount as the State Government may by general or special order determine?

4 Heard finally by consent of the learned counsel appearing
for the parties.

5 Once it is accepted as a proposition of law that the Civil
Court has jurisdiction to entertain, try and decide the suit for partition
of the land re-granted under the provisions of the said Act, it cannot be
said that the decree passed by the trial Court, as has been confirmed
in Appeal becomes without jurisdiction. It is not in dispute that the
original of sub-section (4) of Section 5 of the said Act has not been
considered in the decisions relied upon by the Courts below. The effect
of sub-section (4) of Section 5 of the said Act would be that the decree
passed by the trial Court as has been confirmed in Appeal, can be
made subject to sanction of the Collector and payment of amount as
may be determined by the general or special order of the State
Government. The decree would become executable only upon
obtaining of such permission and making such payment, as a condition
precedent.

6 In view of the above, the Second Appeal is partly allowed.
The decree passed by the trial Court as has been confirmed in Appeal
is made subject to compliance of Sub-section (4) of Section 5 of the
said Act, and it shall become executable only upon obtaining of

sanction from the Collector of the concerned district and upon payment of such amount, as may be determined by the State Government, upon such motion being made by the decree holder.

7 The Collector is at liberty to decide the question of grant of permission on its own merits uninfluenced by the decision of this Court.

8 In view of the order passed in the Second Appeal, the Civil Application No.1658 of 2011 does not survive and is disposed of accordingly.

(R.K. DESHPANDE, J.)