

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

Writ Petition No.1308 of 2014

* Shantabai Vasant Gujar,
Age 72 years,
Occupation: Household,
R/o Warkhede,
Taluka & District Dhule. **.. Petitioner.**

Versus

- 1) Bhagirathibai w/o Daulat Gujar,
(Deceased).
- 2) Vimalbai w/o Raman Gujar,
Age 52 year,
Occupation: Agriculture,
R/o Japi,
Taluka and District Dhule.
- 3) Bhatu Bhaidas Gujar,
Age 35 years,
Occupation: Service.
- 4) Ramkrishna Bhaidas Gujar,
Age 30 years,
Occupation: Agriculture.

Nos.3 & 4 R/o Galwade,
Taluka Amalner, Dist. Jalgaon.

- 5) Rajubai Mahendra Patel,
Age 40 years,
Occupation: Household,
C/o Mahendra Daulat Patel,
R/o Mohadi (Nyahalod)
Taluka & District Dhule.

6) Kalpanabai Chandrakant Patel,
Age 48 yeas,
Occupation: Household,
C/o Chandrakant Hiranman Gujar,
R/o Warkhede,
Taluka & District Dhule.

7) Sangita Laxman Gujar,
Age 45 years,
Occupation: Household,
C/o Laxman Motilal Gujar.

8) Rekhabai Vijay Gujar,
Age 32 years,
Occupation: Household,
C/o Vijay Narayan Gujar.

Nos.7 & 8 R/o Kusumbe,
Taluka Chopda, Dist. Jalgaon.

9) Nilam Raman Gujar,
Age 35 years,
Occupation Agriculture,

10) Rajendra Raman Gujar,
Age 45 years,
Occupation: Agriculture.

11) Vijay Raman Gujar,
Age 57 years,
Occupation: Agriculture.

12) Raman Jagan Gujar,
Age 68 years,
Occupation: Agriculture.

Nos.9 to 12 R/o Japi,
Taluka and District Dhule.

13) Sushilabai Purushottam Gujar,
Age 60 years,
Occupation: Household.

- 14) Purushottam Gajmal Gujar,
Deceased, through
legal representatives:
- 14A) Sushila Purushottam Gujar,
Age 60 years,
Occupation: Agriculture.
- 14B) Vilas Purushottam Gujar,
Age 40 years,
Occupation Agriculture
- Nos.13 & 14-A-14-B
R/o Warkhede,
Taluka & District Dhule.
- 15) Bansilal Daulat Gujar,
Died.
- 16) Dnyaneshwar Motilal Gujar,
Age 52 years,
Occupation : Agriculture.
R/o Japi,
Taluka and District Dhule.
- 17) Rajendra Pandharinath Gujar
(Died)
- 18) Minal Rajendra Jain,
Age Major,
Occupation: Household
R/o 23, 24, Ashoknagar,
L.I.C. Colony, Behind Water Tank
Dhule.
- 19) Lata Murari Khandelwal
Age Major,
Occupation Household,
R/o Gat No.4, Bhandi Bazar Khunt,
C.S. No.2835, Dhule.

20) Kalpana Manohar Khandelwal,
Age Major,
Occupation: Household,
R/o Gat No.4, Bhandi Bazar Khunt,
C.S. No.2835, Dhule.

21) Rajeshree Jagdish Khandelwal,
Age Major,
Occupation: Household.

22) Varsha Suresh Khandelwal,
Age Major,
Occupation: Household.

Nos.21 & 22 R/o Malegaon Road,
Near Wagdevta Temple,
Near Vitthal Mandir, C.S.No.7440,
Dhule.

.. Respondents.

Smt. Sabahat T. Kazi, Advocate, for petitioner.

Shri. M.S. Kulkarni, Advocate, for respondent No.9.

CORAM: T.V. NALAWADE, J.

DATE : 2nd SEPTEMBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both sides for final disposal.

2) The petition is filed by the decree holder to challenge the order made by the learned Civil Judge,

Senior Division, Dhule on Exhibit 70 in Misc. Application No.227/2012. It appears that for execution of the decree in respect of agricultural land the decree was sent to the revenue authority as provided by section 54 of the Civil Procedure Code. The revenue authority took steps, followed the procedure and then actual possession was given to the decree holder and two panchanamas were prepared on 6-4-2013 in respect of two portions of two different agricultural lands.

3) The respondent judgment debtor took objection before the civil court to this work of allotment of share by contending that there was only preliminary decree and unless the Court confirms the report of the Court Commissioner, possession could not have been given. This submission is accepted by the learned Judge of the executing Court and order is made to the effect that the handing over of the possession was not legal and further direction is given to return back the possession.

4) Law developed on section 54 of the Civil Procedure Code is well settled. It is to the effect that

when decree of partition etc. in respect of agricultural land is to be executed, nothing remains in the hands of the civil court when decree is sent to the revenue authority. Section 54 of the CPC and provisions of Land Revenue Code give power of creation of different shares and handing over of the shares to the revenue authority. The revenue authority is required to take care of provisions of other laws like Maharashtra Prevention of Fragmentation And Consolidation of Holdings Act, 1957 etc. In view of this position of law it was not open to the executing Court to interfere in the said work done by the revenue authority. Due to this circumstance, the order made by the learned executing Court cannot sustain in law. The petition is allowed. The order is set aside. Rule is made absolute in aforesaid terms.

Sd/-
(T.V. NALAWADE, J.)

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