

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

903 SECOND APPEAL NO. 462 OF 2016
WITH CA/9614/2016 IN SA/462/2016

KACHARU RAMCHANDRA WALZADE AND ORS
VERSUS
DATTATRAYA LAXMAN WALZADE

...
Advocate for Appellants : Nagargoje A. N.
Advocate for Respondent : A.S. Bajaj
...

CORAM : T.V. NALAWADE, J.
DATED : 8th July, 2016.

ORDER :

1. The appeal is filed to challenge the order made by the Court of Civil Judge, Junior Division, Sangamner, District Ahmednagar in Final Decree Application No. 4/1985, which is confirmed by the District Court, Ahmednagar in Regular Civil Appeal No. 41/2015. Heard the learned counsel for appellants.

2. In Regular Civil Suit No. 439/1976 filed by present respondent, the decree of possession is given in his favour and so, he is entitled to recover 1/2 portion of House No. 2332 and the total area of this property is 70.2 Sq. Mtrs. That decree has become final as against Ramchandra, father of the appellants, original defendants. When for execution of the decree proceeding was filed, initially preliminary decree was prepared and then Final Decree Application No. 4/1985 was filed. In this

proceeding actual partition of the property admeasuring 70.2 Sq. Mtrs. is to be done.

3. On technical grounds, the present appellants took objection in the execution proceeding. When Final Decree Application was allowed first time in the year 1999, the said order was challenged by filing appeal in District Court and the matter was remanded back. Direction was given to appoint Court Commissioner to see that the property was properly partitioned. Again Commissioner was appointed and then he submitted proposal for partitioning the property. The portion shown as A, B, C, D was allotted to the share of decree holder and the remaining portion was kept with the present appellants. This decision was again challenged by filing Regular Civil Appeal No. 43/2012 and again matter was remanded back by the District Court. Again direction was given to take fresh measurement and effect the partition.

4. One advocate was appointed as Commissioner to make proposal and he made proposal by which equal portions can be allotted to both the sides. Under the new proposal, 35.8 Sq. Mtrs. described as A, B, C, D is there. Decree holder, original plaintiff expressed that he was ready to accept any of the two portions prepared by the Court Commissioner and then the order

was made to allot him A, B, C, D portion.

5. This decision was again challenged by filing appeal. It was contended that no Cadestral Surveyor, Officer of City Survey was appointed as Court Commissioner. The record shows that the Court Commissioner has given report that the officer of city survey office was not co-operating and due to that, he was required to make proposal on his own. This submission was accepted and then final decree came to be prepared.

6. In the present proceeding also, this Court asked the learned counsel for appellants as to whether he wants any particular portion, the portion allotted to original plaintiff. There was no reply to this query made by this Court. Thus, it is clear that only to protract the handing over of possession of the portion to which original plaintiff is entitled under the decree of possession, aforesaid tactics were played. It can be said that for many years, by misusing the process of law, the appellants succeeded in protracting the handing over of the possession. No substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/