

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

WRIT PETITION NO. 7592 OF 2016

Bapusaheb Sopan Aher

..PETITIONER

VERSUS

Sukhdev Gajaba Aher and Others

..RESPONDENTS

....

Mr. S.B. Kadu, Advocate for petitioner.

Mr. V.B. Madan Patil, Advocate for Respondent Nos. 1, 2, 4A, 4B, 6 and 7.

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CORAM : T.V. NALAWADE, J.

DATED : 16th DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made on Exhibits 23 and 17 in Regular Darkhast No. 173 of 2012 which is pending in the Court of Civil Judge, Junior Division, Rahata. Both sides are heard.

2. Application at Exhibit 23 was made by present petitioner to make an order to distribute the liability amongst the judgment debtors. The Trial Court has refused to do it. The Trial Court has held that the judgment debtors were in joint possession of the property and so they were jointly and severally liable to pay the mesne profit.

3. Learned Counsel for petitioner submitted that when the petitioner who was in possession alongwith other brothers could have been held liable only in respect of property having area of 80 R, he could not be made liable to pay the entire amount of Rs.91,000/- which is determined as mesne profit. This submission is not at all acceptable. When liability is joint and several, there is liberty to the decree holder to go against one of the several persons who are jointly and severally liable. In that case if one judgment debtor is required to pay entire amount, he gets right to recover the proportionate amount from the remaining judgment debtors. The judgment debtor is not bound to claim proportionate amount from each of the judgment debtor. Thus there is no possibility to interfere in the order. Petition stands dismissed.

(T.V. NALAWADE, J.)

SSD