

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

914 WRIT PETITION NO. 7927 OF 2014

RAMESH NIVRUTI MARWADKAR AND ANOTHER
VERSUS
VYANKAT NIVRUTTI MARWADKAR AND OTHERS

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Advocate for Petitioners : Salunke V.D.
Advocate for Respondent 1 : S.G. Chapalgaonkar
Advocate for Respondent 3 : S.B. Choudhari

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CORAM : T.V. NALAWADE, J.

DATED : 15th December, 2016.

ORDER :

1. The petition is filed to challenge the order made by Tahsildar, Osmanabad in execution proceeding which is referred under section 54 of Civil Procedure Code to the revenue authority by Civil Court. Both the sides are heard.

2. One Vyankat Marwadkar had filed Regular Civil Suit No. 247/2004 for relief of partition and possession and present petitioners were party defendants in the said suit. The suit is decreed and the decree has become final. In accordance with the decree given, the revenue authority has prepared the plan for allotment of shares to the plaintiff and defendants.

3. It is the case of present petitioners that Smt.

Kalawatibai Shendge and others have filed Regular Civil Suit No. 101/2013 for relief of injunction and other reliefs and in that suit, on temporary injunction application, Civil Court has granted relief in her favour and due to this relief, partition of land Gat No. 131, admeasuring 3 H. 84 R., which apparently belongs to Smt. Kalawatibai and other plaintiffs, is prevented. It is contention of the present petitioners that in view of the said order, no execution can be done now of the partition decree and further, there is no possibility of partition of any portion of Gat No. 131.

4. The aforesaid contention of the petitioners cannot be accepted. Firstly, the protection is given by the Civil Court in favour of Smt. Kalawatibai and others, who were not party to R.C.S. No. 247/2004. Secondly, the revenue authority has considered only area of 80 R. portion which is now available and which can become available after taking in to consideration the order made by the Civil Court. Thus, there is no force at all in the objections taken by the petitioners, who are judgment debtors. This Court sees no reason to interfere in the order made by Tahsildar. The petition stands dismissed.

[T.V. NALAWADE, J.]

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