

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

25 WRIT PETITION NO. 8852 OF 2014
WITH CA/848/2016 WITH CA/849/2016.

MALANBI AMJAD ALI, L.RS. AYABALI AMJAD ALI AND
OTHERS
VERSUS
SAYYAD ALI YAKUB ALLI AND OTHERS

Shri. Prashant D. Suryawanshi, Advocate, for petitioners.

Shri. C.V. Dharurkar, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 3 OCTOBER 2016

ORDER:

1) The petition is filed to challenge the order made by the executing Court, Civil Judge Junior Division Beed in Misc Civil Application No.340/2000. Head both the sides.

2) The aforesaid application is filed for actual partition of the property, final decree. It appears that by order dated 26-8-2014 the executing Court has held that the report submitted by the Court Commissioner in which proposal was made of allotment of the shares to the three sharers is rejected and another Court Commissioner is

ordered to see that everybody gets equal share as per the decree.

3) The suit was filed for partition of house property bearing House No.369. It is the grievance of the present petitioner that, in the suit, the property was described by giving the exact size of the property and so the decree can be executed only in respect of the said size of the property and if more area is found in House No.369, share cannot be given to the plaintiffs in the excess area.

4) The aforesaid proposition is not at all acceptable in law. The suit was filed for relief of partition by contending that the aforesaid house property was ancestral property of the plaintiffs and the defendants. The suit is decreed and each of the co sharer, three in number, is held to be entitled to get equal share, one-third share, in the house property. If the property can be identified by number, it was not necessary to give the size of the property and the decree that every co sharer is entitled for one-third share needs to be executed that way but the area need not be taken into consideration which was mentioned in the suit and the area which is available in fact and on the record needs to be considered at the

time of making of the allotment of the shares. The objection of the judgment debtor, present petition is misconceived. If his objection is accepted, he will be getting more share, more area and that will not be equitable partition. There are no merits in this contention.

5) Learned counsel for the petitioners placed reliance on reported cases (1) **2006 (2) Bom. C.R. 746 (Joaquim Joao Fernandes vs. Nazario Pinto)**; and (2) **2015 (1) Bom.C.R. 609 (Ramchandra Guja Rewatkar vs. Mang Vithya Koche)**. Facts and circumstances of each and every case are always different. In view of the peculiar circumstances of the present case quoted above, this Court holds that no interference is warranted in the order made by the trial Court. The Court Commissioner will be only making proposal and again objections of the petitioners will be called as per the procedure. In the result, the petition stands dismissed. Civil applications are disposed of.

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

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