

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11173 OF 2015

Dattatraya Laxman Walzade,
Age 75 years, Occu : Retired,
R/o : Kalyan Jimmibag Deoram
Mahadu Jadhav, Chal Kolsewadi,
Kalyan, Tq. Kalyan, District Thane.

... Petitioner

Versus

1. Kacharu Ramchandra Walzade,
Age : 42 years, Occu : Business,
R/o : Rangar Lane,
Taluka Sangamner,
District Ahmednagar.
2. Kailash Ramchandra Walzade,
Age : 46 years, Occu : Business,
R/o : Rangar Lane,
Taluka Sangamner,
District : Ahmednagar.
3. Ratan Ramchandra Walzade,
Age : 36 years, Occu : Business,
R/o Rangar Lane,
Taluka Sangamner,
District Ahmednagar
4. Mathura Ramchandra Walzade,
Age : 25 years, Occu : Business,
R/o Rangar Lane,
Taluka Sangamner,
District Ahmednagar.

... Respondents

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Advocate for Petitioner : Mr. Anil S. Bajaj
Advocate for Respondent Nos. 1 to 4 : Mr. Ankush N. Nagargoje
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CORAM : V. K. JADHAV, J.

DATED : 01st MARCH, 2016

ORAL JUDGMENT:-

1. Rule. Rule returnable forthwith. By consent, heard finally.
2. Petitioner is the original plaintiff, instituted a suit bearing Regular Civil Suit No. 439 of 1976 for partition and separate possession and the same was decreed on 18.09.1981. After disposal of appeal from the said judgment, petitioner-original plaintiff filed Final Decree Application No. 4 of 1985 for converting preliminary decree into final for its execution. The proceedings of Final Decree Application continued till the year 2012 and on the basis of report submitted by the Court Commissioner, final decree came to be passed. Being aggrieved by the same, respondents, who are the legal heirs of original defendant, filed Regular Civil Appeal No. 43 of 2012 against the final decree and the same was partly allowed and the matter was remanded for re-consideration. In view of the said position, the executing court directed the City Survey Officer to assist the Court Commissioner. Learned Civil Judge Junior Division, Sangamner, by order dated 09.03.2015, has allowed the Final Decree Application and the preliminary decree dated 18/09/1981 passed in Regular Civil Suit No. 439 of 1976 is made final for execution. Being aggrieved by the same, the respondents have preferred an appeal bearing Regular Civil Appeal No. 41 of 2015 and

also filed an application Exh.9 seeking stay to the proceedings of Regular Darkhast No. 62 of 2015. The petitioner strongly resisted the stay application by filing say, however, learned District Judge, Sangamner, by order dated 06/08/2015 has allowed the application filed at Exh.9. Hence this writ petition.

3. Learned counsel for the petitioner submits that the petitioner/original plaintiff is now 78 years old. The petitioner even has made a statement before the lower appellate court that he is ready to accept any part of the suit premises as per decision of the court. Learned counsel submits that since no objection is raised to the preliminary decree, there is no question of challenging the final decree by preferring appeal. Learned counsel further submits that the suit was instituted for partition of the house property situated in city survey area and there is no question of valuation as such. Learned counsel submits that in the commission report, it is specifically mentioned that the area of city survey No. 2332 is divided into two parts which are numbered as city survey No.2332/1 and 2332/2. The area of city survey No. 2332/1 is 35.1 Sq. meter and it is shown as A,B,C,D in the map. Similarly, the portion of city survey No. 2332/2 is shown as D,C,E,F and it's area is also 35.1 Sq. meter. Learned counsel submits that, in view of this, the petitioner has made a statement that he is ready to accept any of the portion allotted to him. Learned counsel submits that, in view of this, the learned District Judge has erroneously

granted stay to the further proceedings in Regular Darkhast. In the alternate, learned counsel for the petitioner submits that the District Judge may be directed to expedite hearing of the appeal.

4. Learned counsel appearing for the respondents submits that there is an open space at the northern side and construction is on the remaining portion of the suit property. Therefore, the objection with regard to valuation, raised by the respondents, is correct and proper. Learned counsel submits that learned District Judge has therefore, rightly allowed the application and accordingly stayed the further proceedings in Regular Darkhast No. 62 of 2015.

5. It appears that the suit was instituted way back in the year 1976 and the judgment and decree passed in the said suit has attained finality in the year 1981. Even though the petitioner filed Final Decree Application No. 4 of 1985, the proceedings of Final Decree Application continued till the year 2012 and accordingly, final decree was passed on the basis of report submitted by the Court Commissioner. Thereafter, respondents preferred Regular Civil Appeal No. 43 of 2012 against the said final decree and the same was partly allowed and the matter, thereafter, was remanded to the trial court. Again, being aggrieved and dissatisfied by the order passed by the trial court on 09.03.2015 in Final Decree Application No. 4 of 1985, the respondents herein, have preferred Regular Civil Appeal No. 41 of 2015. Learned

District Judge, by ignoring this history, has granted stay to the further proceedings in Regular Darkhast No. 62 of 2015. In view of this, in my opinion, the District Judge may be directed to dispose of Regular Civil Appeal No. 41 of 2015 within a period of two months from the date of receipt of this order. Till that time, the stay granted to the further proceedings in Regular Darkhast would remain in force. Hence, the following order:

O R D E R

- I. The writ petition is hereby partly allowed.
- II. District Judge-1, Sangamner is hereby directed to dispose of Regular Civil Appeal No. 41 of 2015 as expeditiously as possible and preferably within a period of two (02) months from the date of receipt of this order.
- III. The order dated 06.08.2015 passed by District Judge-1, Sangamner below Exh.9 in Regular Civil Appeal No. 41 of 2015, granting stay to the further proceedings of Regular Darkhast No. 62 of 2015 would remain in force till the disposal of Regular Civil Appeal No. 41 of 2015, as directed.
- IV. Rule is accordingly made absolute. The writ petition is disposed of. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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