

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1393 OF 2016

MANSUR RASUL SANADI ALIAS
APARADH (DECD) THROUGH LRS.
AND ORS

...Petitioners

Versus

SAU. MALAN SHAMSUDDIN ZAREKAR
AND ORS

...Respondents

....

Mr. N.J. Patil i/b. A.N. Patil, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 8th FEBRUARY, 2016

P.C.

1. Heard Mr.N.J. Patil, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 30.9.2015 passed by learned Jt. Civil Judge, Junior Division at Ichalkaranji below Exhibit-1 in Final Decree No.13/2015. By that order, learned trial Judge directed precept be sent to the District Collector, Kolhapur along with documents in the matter and the proceedings be closed as disposed of. Learned trial

Judge referred to the decision of this Court in ***Annasaheb Nagane v. Rajaram Nagane, 2001(3) MhLJ 53***, wherein it is observed as under :

“After passing of preliminary decree for partition, the decree cannot be made effective without there being a final decree. Every application received requesting to send to the Collector documents of partition should be disposed off within 30 days from its receipt. It should be treated as an application in the disposed suit without opening any independent proceeding in this behalf. No notice to any of the parties to the application is necessary as it is not a petition seeking any adjudication of any of the rights of the parties. These directions shall be applicable to all pending petition.”

3. Mr. Patil submitted that no notice was given to the petitioners before passing the impugned order. He further submitted that in paragraph-1 of the application filed under Section 54, reference is made to the property situate in Mouje Rui, Taluka – Hatkanangale, District – Kolhapur. However in the plaint it is asserted that the suit lands are situate at Mouje Kabnoor, Taluka – Hatkanangale, District – Kolhapur. In other words, he submitted that the decree holder is trying to execute the decree in respect of the property other than the suit property. As noted earlier, learned trial Judge has dealt with the

application under Section 54 of CPC by observing that as per the decision of this Court in the case of ***Annasaheb Nagane (supra)***, no independent proceeding is required to be initiated and no notice to any of the parties to the application is necessary as it is not a petition seeking any adjudication of any of the rights of the parties.

4. In view thereof, I do not find that learned trial Judge has committed any error in passing the impugned order. In fact learned trial Judge has not adjudicated any rights of the parties and has merely sent precept to the District Collector, Kolhapur as the lands are agricultural lands. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)