

Mr. S. S. Kanetkar for Petitioners.
Mr. P. G. Jagdale for Respondents No.22 to 26 and 28.
Mr. M. M. Sathaye for Respondents No.47 to 49.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 11.01.2012 passed by the learned 6th Joint Civil Judge, Senior Division, Nashik below exhibit-82 in Final Decree No.1 of 2007. By that order, the learned trial Judge rejected the application filed by the petitioners, hereinafter referred to as judgment debtors No.56 to 72, for deleting Survey No.980 and 981.

1/3

instituted by Baddrudin Imamabhai and seven others against Fakoriddin, since deceased through his legal representatives. The Suit was compromised between the parties. During the pendency of Final Decree Application No.1 of 2007, judgment debtors No.56 to 72 filed application for deleting Survey No.980 and 981 situate in Nashik. Decree-holders filed Purshis at exhibit-143 on 29.08.2011 giving up their claim in respect of these properties. By the impugned order, the learned trial Judge rejected the application by reserving liberty to the judgment debtors No.56 to 72 to raise their objections at the time of final arguments.

4. Mr. Kanetkar submitted that as the decree-holders also gave up their claim in respect of Survey No.980 and 981, the learned trial Judge ought to have deleted these properties. He submitted that certificate under Section 32-M of the Bombay Tenancy and Agricultural Lands Act, 1948 is issued in favour of the ancestors of judgments debtors-petitioners. In short, petitioners have become owners in view of that certificate. He submitted that the said certificate is also placed on record. The learned trial Judge, however, rejected the application on the ground that the shares of some of the parties to the decree have not been separated and it will be open to the judgment debtors to raise objections at the time of final arguments. Mr. Kanetkar submitted that survey No.980 and 981 deserve to be deleted from the final decree proceedings.

5. On the other hand, Mr. Sathaye relied upon the order dated 22.03.2010 passed by this Court in Writ Petition No.6619 of 2009. In paragraph 11, this Court specifically recorded a finding that the shares of some of the parties to the decree have not been separated. While passing the impugned order, the learned trial Judge has considered the order passed by this Court in Writ Petition No.6619 of 2009. He,

therefore, submitted that no case is made out for interfering with the impugned order.

6. As noted earlier, Suit is instituted for partition and separate possession and decree of partition is passed. In other words, in a Suit for partition, all the defendants are also plaintiffs. Merely because plaintiffs have filed Purshis on 29.08.2011 at exhibit-143 giving up their claim, will not enure to the benefit of the judgment debtors No.56 to 72. At the same time, whether predecessors of judgment debtors No.56 to 72 became owner in view of 32-M certificate is a matter in issue. The learned trial Judge has kept all contentions / objections of judgment debtors No.56 to 72 open. In view thereof, I do not find that any case is made out for interfering with the impugned order at this stage. Hence, Petition fails and the same is dismissed. The Final Decree Application shall be decided uninfluenced by the observations made herein and in accordance with law.

(R. G. KETKAR, J.)

Minal Parab