

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

WRIT PETITION NO. 3262 OF 2016

- 1 Baliram s/o Babu Mane
 age 85 years, occ. Agriculture
 r/o Tadsonna, Tq. & dist. Beed
- 2 Babu s/o Baliram Mane
 age 41 years, occ. Agriculture
 r/o Tadsonna, Tq. & Dist. Beed
- 3 Babasaheb s/o Babu Mane
 age major, occ. Agriculture
 r/o Tadsonna, Tq. & Dist. Beed
- 4 Rameshwar s/o Baliram Mane
 age major, occ. Agril
 r/o Tadsonna, Tq. & Dist. Beed

.. PETITIONERS

VERSUS

- 1 Parwatibai w/o Babasaheb Gaikwal
 age major, occ. Agri & household
 r/o Nababpur, Tq. Wadwani
 Dist. Beed
- 2 Achut s/o Vishwanath Mane
 age 59 years, occ. Agril
 r/o Tadsonna, Tq. & Dist. Beed
- 3 Kausabai w/o Janikiram Pawade
 age major, occ. Agril
 r/o Pawade Hadgaon
 Tq. Sailu, Dist. Parbhani
- 4 The District Collector, Beed
 Tq. & Dist. Beed
- 5 The Tahsildar Beed
 Tq. & Dist. Beed
- 6 The Circle Officer Pimpalner Division
 Tq. & Dist. Beed

.. RESPONDENTS

Mr. P.C. Mayure, advocate holding for Mr. S.R. Shirsat, advocate for petitioners.

Mr. S.R. Yadav Lonikar, AGP for respondents no. 4 to 6.

Mr. V.B. Jadhav, advocate for respondent no. 3.

=====

CORAM : S. B. SHUKRE, J.
DATE : 6th MARCH, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard finally by consent of learned counsel for the respective parties.
3. Vide order passed on 14th June, 2011, it appears that some changes have been made which apparently have an effect of modifying the decree. It is true as submitted by learned counsel for the respective parties that gat no. 77 has been sold out. It is also true that decree which has been passed on 19th January, 2006 and which has been confirmed by this Court in second appeal, is required to be executed to an extent it is executable. If some part of the decree cannot be executed in terms of decree, an alternate way of executing the decree with the consent of the parties can also be considered by the learned Sub-Divisional Officer. But, without such consultation it may not be appropriate to make some alterations which would apparently have an effect to correct the decree. If parties are agreeable to it, the learned Sub-Divisional Officer would be at liberty to execute the decree even by resolving the alternate way or otherwise, he shall be at liberty to execute the decree only to an extent it is executable. As regards unexecutable part of the decree, the matter should be certainly referred to the executing Court for obtaining appropriate order.
4. In this view of the matter, the order dated 14th June, 2011 is quashed

and set aside and the matter is remitted back to the learned Sub-Divisional Officer for consideration afresh and issuing necessary directions to the Naib Tahsildar, Beed. Parties to appear before the learned Sub-Divisional Officer on 15th March, 2017 at 11.00 am for reconsideration of the matter and its decision in accordance with law, keeping in view the observations made hereinabove. The matter shall be decided within one month from the date of appearance of the parties. The amount deposited here be transferred to the executing Court for appropriate consideration. Rule made absolute in above terms. No costs.

(S. B. SHUKRE)
JUDGE

dyb