

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

WRIT PETITION NO.10660 OF 2015

Hari Manohar Autee
Age 68 years, Occu. Agri.,
R/o Tembhurni, Taluka Jafrabad,
District Jalna

... PETITIONER

VERSUS

1. Fakirchand Eknath Salve,
Deceased, per L.Rs.
- 1A) Moti Fakirchand Salve,
Age 33 years, Occu. Agri.,
R/o Tembhurni, Taluka Jafrabad,
District Jalna.
- 1B) Prakash Fakirchand Salve,
Age 40 years, Occu. Agri.
R/o as above.
- 1C) Janabai Baburao Jadhav,
Age 45 years, Occu. Household,
R/o Anwa, Taluka Bhokardan,
District Jalna
- 1D) Manabai Ganpatrao,
Age 43 years, Occu. Household,
R/o Near Vitthal Mandir,
Teli Galli, Phulambri,
Taluka Phulambri,
District Aurangabad.
- 1E) Chandrakalabai Purshuttam Pangarkar,
Age 35 years, Occu. Household,
R/o Near Paknikar Hospital,
Police Galli, Kadrabad, Jalna
- 1F) Hirabai Digambar Domle,
Age 34 years, Occu. Household,
R/o Savargaon Dukare,
Taluka Chikhali, District Buldhana

1G) Sarlabai Krishna Raut,
Age 33 years, Occu. Household,
R/o Tendulwadi, Taluka Gangapur,
District Aurangabad

1H) Shakuntala Ratan Bujade,
Age 22 years, Occu. Household,
R/o Walse Jod, Taluka Bhokardan,
District Jalna.

... RESPONDENTS

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Shri S.S. Bora, Advocate for petitioner
Shri Yogesh Somani, Advocate for respondent No.1A to 1E
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CORAM: S. B. SHUKRE, J.

DATED: 16th March, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. In an exercise of suo moto power under Section 54, in execution proceedings, the Executing Court, by the order passed on 19/6/2015, has directed that the precept be prepared and sent to the Collector under Section 54 of the Civil Procedure Code for execution of the decree on the ground that the land under execution is an agricultural land. It is this order which has been challenged for its legality and correctness in the present petition.

3. Learned counsel for the petitioner submits that, the suit having been filed and decreed for delivery of possession of an immovable property, in which no issue of partition and separate possession was ever involved, not the provision of Section 54, but the provision of Order 21 Rule 35 of the Civil Procedure Code is applicable, which fact has been completely missed out by the court of Civil Judge. According to the learned counsel for the respondent, the learned Civil Judge is right because in the case of **Arun Ashruba Mhaske Vs. Atmaram Dattu Mhaske** reported in **2007 ALL MR (5) 167**, learned Single Judge of this Court found that the provisions of Order 21 Rule 35 do not apply to cases where possession of agricultural land has to be delivered.

4. On going through the case of Arun Vs. Atmaram (supra), I find that there is no substance in the argument of learned counsel for the respondent. The learned Civil Judge has not considered in its entirety the judgment rendered in the case of Arun Vs. Atmaram. It was a case where the suit was for partition and separate possession and, therefore, the provisions of Section 54 was applicable. This is a case wherein the issue of partition and separate possession was never involved and the suit was only for delivery of possession

of the immovable property to which the provisions of Order 21 Rule 35 of the Civil Procedure Code applies. Therefore, it is to be stated that the impugned order is passed upon misconception of facts and law and, therefore, it deserves to be quashed and set aside.

5. In the result, the Writ Petition is allowed. The impugned order is quashed and set aside and it is directed that the respondents or the Judgment Debtors shall hand over the possession of the immovable property in terms of the decree passed in the suit within one month from the date of this order. Rule is made absolute in the above terms. No costs.

(S. B. SHUKRE)
JUDGE

fmp/wp10660.15