

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

WRIT PETITION NO. 9448 OF 2012

Hari Gansaram Bhalerao
Since deceased through
L.Rs. Dinkar Hari Bhalerao
and others

..PETITIONERS

VERSUS

The State of Maharashtra
Deceased through L.Rs.
Bansi Gansaram Bhalerao,
and others

..RESPONDENTS

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Mr.Anand I. Deshmukh, Advocate for petitioners
Mr.A.G.Talhar, Advocate for respondent 1-A to 1-D

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CORAM : S.V. GANGAPURWALA, J.

DATE : APRIL 24, 2017

PER COURT :

Mr.Deshmukh, learned Counsel for the petitioner submits that the petitioner has purchased the property from the original judgment debtor. The decree passed is only a preliminary decree. The objection raised by the petitioner under Section 47 of the Code of Civil Procedure ("C.P.C.", for short) has not been entertained.

The learned Counsel submits that today, the title vests with the petitioner and as such, unless the petitioner is added as a party, the execution cannot be proceeded further. To buttress the submission that unless the preliminary decree has become final the same cannot be executed, the learned Counsel relies on the judgment of this Court in the case of **Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and ors., AIR 2007 SC 1077(1)**.

2. Mr. Talhar, learned Counsel for the respondents submits that the dispute between the parties is not covered by Section 47 of the C.P.C. The learned Counsel relies on the judgment of Division Bench of this Court in the case of **Bashiruddin Khwaja Mohiuddin Vs. Binraj Murlidhar Shop, 1987 Mh.L.J. 30**.

3. There cannot be any dispute with the proposition that only a final decree can be executed and not a preliminary decree. The trial

Court has passed a preliminary decree. According to the learned Counsel, the properties involved are agricultural lands. The same will have to be referred to the revenue authorities as per Section 54 of the C.P.C. for further process. The executing Court has sent the said decree to the Collector for effecting partition as per Section 54 of the C.P.C.

4. The suit for partition and separate possession is decreed on 24.04.1996. The petitioner appears to be a purchaser of the suit properties under the instrument dated 01.08.2009. The only objection raised by the petitioner under Section 47 of C.P.C. is that the original decree holder has died and his legal heirs have not obtained succession certificate before proceeding with the execution. No such requirement is shown to exist under any of the provisions of law. Apart from this objection, there was no objection raised in application under Section 47 of the C.P.C.

5. In the execution proceedings, there is no question of addition of party. If any of the parties is aggrieved by the execution proceedings, the third party, who is in possession, has got remedy open. The objection under Section 47 of C.P.C. raised needs no further consideration. While executing the decree, the revenue authorities can consider the portion to be allotted as per the decree and at that time, the objection can be raised by the relevant parties.

6. With these observations, the Writ Petition stands disposed of. No costs.

[S.V. GANGAPURWALA, J.]

kbp