

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9792 OF 2014

Ramchandra Nathu Koli,
deceased through LR:
Vijay s/o Ramchandra Koli,
age: 57 years, Occ: service,
R/o Ganadhish Apartment,
Indira Nagar, Near Mahila Bank,
Nashik 09.

Petitioner

Versus

01 Smt.Vaijantabai @ Vatsalabai
w/o Fakira Koli, age: 41 years,
Occ: Nil, R/o Virdel,
Taluka Shindkheda, Dist.Dhule.

02 Sau.Ratnabai Madhukar Chauvan
(Koli), age: 25 years, Occ: Nil,
R/o MIDC Ambad,
Tal. & District Nashik.

Respondents

Mr.Chandrakant Patil, advocate holding for Mr.S.U.Chaudhari,
advocate for the petitioner
Mr.N.N.Desale, advocate for Respondents.

CORAM : S.B.SHUKRE, J.

DATE : 02nd February, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 The challenge raised by the petitioner is that the order
dated 18.08.2014 does not amount to passing of final decree in the
matter, as share in the agricultural land, has not been carved out

by metes and bounds and as such, so far as this property is concerned, there is no executable decree.

3 After hearing both the sides, I find that there is no final decree in the matter, as the impugned order, admittedly, shows that there is no physical carving out of 4/9th share to the decree holder in agricultural land bearing G.No.383. This has to be done by the Collector and report, in that regard, is required to be submitted to the executing court so that the executing court can pass final decree calling upon the parties to pay necessary stamp duty and then only, the decree so passed, would be executable in terms of Order XX Rule 18 (2) of the Code of Civil Procedure.

4 If the report of the Collector is already received regarding partition by metes and bounds by specifically determining the shares, same shall be considered and in this respect, it would be apt to make useful reference to the observations of the Hon'ble Apex Court in the case of **Shankar Balwant Lokhande (dead) by L.Rs. Vs. Chandrakant Shankar Lokhande & another**, reported in AIR 1995 SC 1211, wherein the Apex Court has observed in paragraph no.12 that, until the final decree determining the rights of the parties by metes and bounds is drawn up and engrossed on the stamped paper(s) supplied by the parties, there is no executable decree, as envisaged under Order 20 Rule 18(2) of the Code of Civil Procedure.

5 This requirement of law has not been complied with by the executing court and, therefore, to that extent, the impugned

order dated 18.08.2014, declaring it to be final decree in respect of agricultural land, is liable to be quashed and set aside and it is quashed and set aside. If there is any report received from the Collector showing determination of rights of parties by metes and bounds, same shall be considered and on its basis, a specific final decree shall be passed subject to the requirement of payment of requisite court fees.

6 So far as house property is concerned, there is no need to interfere with the impugned order as the decree holder is already put in possession of the same. Of course, requirement of payment of stamp duty needs to be complied by the decree holder.

7 In the result, writ petition is allowed. Rule is made absolute in above terms. No costs.

S.B.SHUKRE
JUDGE

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