

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

WRIT PETITION NO.6820 OF 2017

Bhangya Maroti Vijay Vyayam
Shala Mandal,
(Registered Trust having
Registration No.E/156/Dhule).
Lane No.6, Dhule,
Tq. and Dist.Dhule,
through Bhagwan Rambhau Karankal,
Age : 51 years, Occ. Business,
r/o.Dwarka, Lane No.6,
Near Parola Road, Dhule ..Petitioner

Vs.

Laxmibai w/o. Baburao Marathe,
Age : 61 years, Occ. Household,
and others ..Respondent

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Mr.A.S.Sawant, Advocate for petitioner
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**CORAM : SANGITRAO S. PATIL, J.
DATE : JUNE 28, 2017**

PER COURT :

Heard.

2. The petitioner has challenged the order dated 30.11.2015 below application Exh.49 in Final Decree No.1 of 2010 passed by the learned Joint

Civil Judge Senior Division, Dhule, whereby the claim of the petitioner for its impleadment as party to the proceedings came to be rejected.

3. The learned Counsel for the petitioner submits that the petitioner is a trust having possession over the property bearing C.T.S. No.1620 since last more than 70 years, which is the subject matter of the final decree proceedings. It is running a Gymnasium in the said property. The learned Counsel for the petitioner submits that in order to substantiate the claim of the petitioner over the suit property, it was necessary that the petitioner should have been allowed to be impleaded as a party to the final decree proceedings.

4. It seems that the Court Commissioner who was appointed to the proposed properties to be placed in the shares of the parties to the suit, had issued a notice to Bhagwan Rambhau Karankal, who

happened to be one of the trustees of the petitioner - Trust. This fact prima facie shows concern of the petitioner with the property bearing C.T.S. No.1620. However, since the petitioner is not a party to the suit, the decree passed in the said suit would not be binding on the petitioner. If the petitioner wants to resist the decree that may be passed and put up for execution on the basis of its possession, the petitioner will have an appropriate remedy under Order XXI Rule 97 of the Code of Civil Procedure. In the absence of any specific decree of eviction passed against the petitioner, after extending the petitioner an opportunity of hearing, no coercive action could be taken against the petitioner. When such appropriate remedy is available to the petitioner, it would not at all be necessary that the petitioner should have been added as party to the final decree proceedings.

5. In view of the above facts and circumstances of the case, I am not inclined to interfere with the order dated 30.11.2015 below application Exh.49 in Final Decree No.1 of 2010 passed by the learned Joint Civil Judge Senior Division, Dhule. The petitioner will be at liberty to take recourse to the provisions of Order XXI Rule 97 of the Code of Civil Procedure, in case it is in possession of the property subject-matter of the partition suit.

6. With these observations, the Writ Petition is dismissed. No costs.

[SANGITRAO S. PATIL, J.]

kbp