

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6690 OF 2017

Yeshwant Tukaram Gulve & anr.

... Petitioners

Vs.

Trimbak Dagadu Gulve
since deceased, through
Shivaji Trimbak Gulve & Ors.

... Respondents

Mr.R.M. Haridas for the Petitioners

Mr.P.D. Patil for Resp. Nos.1A to 1E, 5A to 5F and 7

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 22, 2017**

P.C. :

1. This Writ Petition is directed against the order dated 24.6.2016 passed by the learned Joint Civil Judge, Junior Division, Igatpuri, passed below Exhibit 1 in Final Decree Application No.2 of 2016 whereby the learned Executing Judge has directed to send the precept in respect of agricultural properties mentioned in the decree for effecting the partition as per section 54 of the Civil Procedure Code.

2. Learned Counsel for the petitioners submits that the petitioners are the legal heirs of original judgment debtor and the respondents are the legal heirs of the original decreeholder. It is submitted that the original judgment and decree is of 11.12.1968 passed in the R.C.S. No.98 of 1967 and the suit was for partition.

He submits that the petitioners want to take necessary legal steps before the executing Court and this order was passed without giving notice to the petitioners and, therefore, were not heard and the decree of 1968 was processed for execution in the execution proceedings in the year 2016. He submits that for nearly four weeks, no possession is to be taken by the Collector.

3. Learned Counsel for the Respondents has supported the order of the trial Court and submitted that the measurement work and the effective partition further by the Collector will take time.

4. The impugned order is passed one year back i.e., on 24.6.2016. It appears that till today, neither the Collector has carried out any execution work nor any proceedings are filed by the petitioners before the executing Court till today. The petitioners are free to file appropriate proceedings, if they want to, subject to merits. However, nothing can be faulted with the order of the executing Court especially when the decree is of 1968 in the suit of 1967.

5. In the circumstances, the Petition is dismissed.

(MRIDULA BHATKAR, J.)