

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11611 OF 2016

Shri Amrut Kisanrao Panhale
And Ors.

...Petitioners

Versus

Shri Abhijeet Sham Panhale
And Anr.

...Respondents

....
Mr.A.V. Anturkar, Senior Advocate i/b. Sandeep Phatak,
Advocate for the Petitioners.

Mr.Sanjiv A. Sawant, Advocate for Respondents No.1 and 2.

....

CORAM : R. G. KETKAR, J.

DATE : 09th FEBRUARY, 2017

P.C.

1. Heard Mr.A.V. Anturkar, learned Senior Counsel for the petitioners and Mr.Sanjiv Sawant, learned Counsel for the respondents, at length.

2. Rule. Mr. Sawant waives service for the respondents At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of

India, the petitioners, hereinafter referred to as the 'decree holders' have challenged the judgment and order dated 7.7.2016 passed by the learned 11th Civil Judge, Senior Division, Pune below Exhibit-153 in Special Darkhast No.96/2010. By that order, the learned trial Judge allowed the application filed by the respondents, hereinafter referred to as the 'judgment debtors', and directed the decree holders to sign the application before the appropriate authority for getting sanction for sub-division as per the map attached with the consent decree.

4. Special Civil Suit No.1075/1999 was instituted by the decree holders. The parties filed compromise petition at Exhibit-113 in that suit. By order dated 28.8.2001, the learned trial Judge disposed of the suit in terms of the consent terms. While disposing of the suit, the learned trial Judge has recorded that the compromise petition was read over to the parties in vernacular language to which they agreed to abide by with its contents. They also agreed the contents of the compromise petition. Signatures of the parties were identified by their Advocates. The learned trial Judge accepted the compromise terms and directed drawing of decree in terms of compromise petition Exhibit-113.

5. The dispute between the parties in respect of C.T.S. No.750 admeasuring 31,000 sq. ft. equivalent to 2880 sq. mtrs. situate at Bhawani Peth within the Municipal limits of Pune Municipal Corporation. It was agreed between the parties that 50% share in the property bearing C.T.S. No.750, Bhawani Peth, situate within the Municipal limits known as Panhale Bungalow, totally admeasuring 31000 sq. fts. Equivalent to 2880 sq. mtrs. out of which left side i.e. western side area admeasuring 1440 sq. mtrs along with building and other structures standing thereon and share allotted to the judgment debtors is more fully and particularly described in red lines in the map or plan annexed thereto. 50% of the said property from the right side i.e. eastern side admeasuring 1440 sq. mtrs or allotted to the shares of judgment debtors. Clause 9 thereof reads thus :

“9] City Survey No.750, Bhawani Peth, Pune in a big property and Plaintiffs and Defendants have sub divided the same as per the plan attached hereto, forming part thereof. Hereafter both the parties will try to get said sub division sanctioned from the concerned authorities of City Survey Office and Pune Municipal Corporation and all expenses required for the same are agreed to be borne and paid by the Plaintiff, Defendants No.4 to 7 and defendant Nos.1 to 3 in equal proportion. After

demarcation a compound wall of six feet in height will be erected and all expenses for the same will be shared by Plaintiff and Defendant Nos.4 to 7 on the one hand and Defendant Nos.1 to 3 on the other in equal proportion.”

6. Perusal of this clause shows that the decree holders and the judgment debtors have sub divided C.T.S. No.750 as per the plan attached to the consent terms, forming part thereof. Hereafter both the parties will try to get said sub division sanctioned from the concerned authorities of City Survey Office and Pune Municipal Corporation and all expenses required for the same are agreed to be borne and paid by the decree holder, judgment debtors No.4 to 7 and judgment debtors No.1 to 3 in equal proportion. After demarcation a compound wall of six feet in height will be erected and all expenses for the same will be shared by the decree holder and judgment debtors No.4 to 7 on the one hand and judgment debtors No.1 to 3 on the other in equal proportion.

7. In pursuance thereof, the decree holders filed application in February, 2010. By order dated 11.9.2015, the learned trial Judge disposed of various applications by passing common order. Clauses-1 to 7 of the operative part of the order read thus :

- “1. The Decree Holder and Judgment Debtor are directed to file common application before C.T. Survey Officer Pune and Pune Municipal Corporation on or before 25/09/2015 for sanctioning the sub division of property bearing No.C.T. Survey No.750, Bhawani Peth, Pune, total admeasuring 31000 sq. ft. having old structure standing thereon out of which western side area admeasuring 1440 sq. mtrs. allotted on the share of Decree Holder and remaining eastern side half portion admeasuring 1440 sq. mtrs. allotted on the share of Judgment Debtor Nos.1 to 3, more specifically described in consent decree and the map attached to consent decree.
2. If the parties are not agreed to file common application on or before 25/09/2015, the Decree Holder or the Judgment Debtor Nos.1 to 3 or both shall file separate application for sanction of the sub division of C.T.S. No.750 to C.T. Survey Officer and Pune Municipal Corporation.
3. By this order the office of C.T. Survey Pune and Pune Municipal Corporation are hereby directed to sanction the sub division of the property bearing No.750, Bhawani Peth, Pune as per the consent decree and the map attached to the consent decree, even if the common application is not filed by the Decree Holder and Judgment Debtors.
4. If the C.T. Survey Office Pune find it necessary that demarcation of the C.T. Survey No.750, Bhawani Peth, Pune is to be made before sanctioning the sub division of the property, the said office is directed to demarcate the property as per the consent decree on requisite payment of fees by parties who will apply for sanction. Other party will be liable for reimburse of 50% expenses of demarcation of the plot for sanctioning of the sub division to the party who pay the fees.
5. On sanction of sub-division of C.T.S. No.750 by C.T. Survey Officer, Pune, parties shall construct the compound wall as per clause (9) in consent decree.

6. The Decree Holder and Judgment Debtors are directed to file their separate affidavit stating therein their submission regarding payment of dues and taxes as per the terms of consent decree along with the documentary proof of payment, specifically mentioning the properties given in consent decree. Affidavit has to be filed till next date.
7. Accordingly all pending applications in the said proceeding filed by both parties are hereby disposed of by this common order.”

8. The grievance of the decree holders is that the consent terms recorded that the area of C.T.S. No.750 is admeasuring 2880 sq. mtrs. However, the judgment debtors submitted the plan for sub-division before the Corporation wherein the area of 2770.0 sq. mtrs is mentioned instead of 2880 sq. mtrs. By the impugned order, the learned trial Judge has directed the decree holders to sign the application before the appropriate authority. Mr. Anturkar submitted that the decree holders have reservation to sign the application as judgment debtors have not correctly mentioned the area of 2880 sq. mtrs. in the sub-division plan submitted before the Corporation.

9. Mr. Anturkar invited my attention to the application dated 23.9.2015 made by the decree holders to the City Survey Officer as also Pune Municipal Corporation. He submitted that

the decree holders will sign the application before the appropriate authority provided the judgment debtors correctly mention the area of 2880 sq. mtrs in the sub-division plan.

10. Mr. Sawant submitted that the judgment debtors will produce certified copy of the consent terms together with map forming part of the consent terms before the Pune Municipal Corporation and City Survey Office for sanction of sub-division mentioning area 2880 sq. mtrs. He will serve the application along with consent terms and also map attached to the consent terms showing the shares allotted to judgment debtors more fully and particularly described by red line in the map / plan annexed to the consent terms mentioning area of plot as 2880 sq. mtrs. within two weeks from today. Mr. Anturkar submits that if the application is submitted along with consent terms and the map attached to the consent terms showing area of 2880 sq. mtrs, the decree holders will sign said application within one week from receipt thereof. Accordingly, the impugned order stands modified. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)