

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5875 OF 2016**

Baban Kashinath Sarode

..Petitioner

Vs.

Maruti Kashinath Sarode & ors

..Respondents

Mr. Dilip Bodake for the Petitioner

Mr. Jaydeep Deo for the Respondent Nos.1, 3, 4A to 4D

Mrs. Vaishali Nimbalkar AGP for the Respondent Nos.7 to 9

CORAM : R. M. SAVANT, J.

DATE : 3rd FEBRUARY, 2017

P.C.

1 The communication dated 4-2-2016 and the notice dated 2-4-2016 which are annexed to the above Petition as Exhibits O and P respectively and taken exception to by way of the above Petition. The said communication dated 4-2-2016 refers to the hearing which took place in respect of the partition statement which was prepared in execution of the decree for partition whereby the Plaintiffs were granted 1/6th share. The said communication records that the partition by metes and bounds be done after taking into consideration the contentions of the parties which are contained in their reply dated 31-12-2015. The notice dated 2-4-2016 is in furtherance of the said communication dated 4-2-2016 whereby the parties are directed to remain present on site for carrying out measurement.

2 It is the submission of the Learned Counsel for the Petitioner that

the partition statement has been prepared earlier in the year 2005 which was sent to the Tahsildar for confirmation under Section 85 of the Maharashtra Land Revenue Code and therefore would not open for the Tahsildar to follow the course of action as contained in the communication dated 4-2-2016.

3 On the other hand, it is the contention of Mr. Deo the Learned Counsel appearing for Respondent Nos.1, 3, 4A to 4D who are the Defendants in the Suit and who are the contesting Respondents in the instant Petition that the earlier partition statement was prepared on 16-4-2005 exparte without taking into consideration the contention of the said Respondents who would be vitally affected. It is further the contention of the Respondents that an objection was taken on the same day i.e. 16-4-2005 by the said Respondents by making an application to the Tahsildar. It is precisely for the said reason that the course of action as propounded in the letter dated 4-2-2016, has been directed to be taken. The parties would obviously have remedies under the Maharashtra Land Revenue Code against the acceptance of the partition statement.

4 In my view, therefore, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]