

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.161 of 2017
[Ramesh Bhaurao Awachat Vs. Pramod Bhaurao Awachat & others]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. R. A. Haque, Adv., for the appellant.
Mr. Mahesh Masodkar, Adv., for respondent no.1.

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CORAM : A. S. CHANDURKAR, J.

DATE : 28th June, 2017

Defendant no.1 in Regular Civil Suit No. 165 of 2013 has challenged the final decree passed in a suit for partition and separate possession.

The respondent nos. 1 and 2 are the original plaintiffs who had filed a suit for partition and separate possession. This suit was decreed on 21st December, 2013 by passing a preliminary decree. Pursuant thereto, Commissioner came to be appointed for determining the shares. The Commissioner after calling for suggestions from the parties prepared a report at Exh.73. After grant of due opportunity to the parties, the trial Court accepted this report. Final decree accordingly came to be passed.

The defendant no.1 challenged this decree by filing an appeal and by the impugned judgment, said appeal has been dismissed.

Shri R.A. Haque, learned counsel for the appellant, submitted that the report of the Commissioner at Exh.73 along with the accompanying map has taken into consideration a larger area for partition. According to him, the subject-matter of the suit was 1292 sq. ft. land, while the Commissioner's report refers to 1320 sq. ft. land. He then submitted that adequate frontage to the portions allotted to the parties was insufficient and, therefore, a fresh exercise ought to be undertaken to rectify this aspect.

Shri Mahesh Masodkar, learned counsel for the plaintiffs, supported the impugned judgment. According to him, the Commissioner gave sufficient opportunity to the parties initially to make their suggestions. After his report was submitted, present appellant did not object to this report. An objection raised by defendant no.2 was considered while accepting the said report. Even before the appellate Court, these objections were not raised by the appellant. He, therefore, submitted that the appellant was precluded from raising such objection.

Heard the learned counsel for the parties and perused the documents on record.

The Commissioner's report at Exh.73 indicates that initially the Commissioner had sought for suggestions from the parties about the manner in which

the property should be partitioned. The decree holders on 09th November, 2014 submitted their suggestions. However, the judgment debtors did not give any suggestion. The Commissioner then prepared his report along with map. This report is dated 4th December, 2014. In this report, an attempt was made to carry out equitable partition as far as possible. The trial Court accepted this report after noting that the defendant no.1 did not object to the same. These final decree proceedings have been confirmed by the appellate Court.

Considering the fact that the appellant herein neither put in his suggestions nor raised any objection to the report of the Commissioner and further did not agitate this aspect before the appellate Court, it is too late at this stage of the proceedings to consider the said objection. In terms of provisions of Order-XXVI, Rule 14 (3) of the Code of Civil Procedure, 1908, there was an opportunity to object to the report of the Commissioner. The same not having been done, such objections cannot be gone into at this stage. Hence, the appeal does not give rise to any substantial question of law. The same is accordingly dismissed. No costs.

Judge

