

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 WRIT PETITION NO. 4526 OF 2015

SHANKAR MAHADU MHAIS LRS NANA AND OTHERS
VERSUS
SOPAN MAHADU MHAIS

.....

Advocate for Petitioners : Mr. Karpe Rahul R.

Advocate for Respondent : Mr. K. B. Autade

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CORAM : V. K. JADHAV, J.

DATED : 9th APRIL, 2018

PER COURT:-

1. The learned counsel for the petitioners, on instructions, seeks leave to withdraw this Writ Petition with liberty to file an application before the civil court for passing of another preliminary decree for varying the shares of the parties in tune with the subsequent events. The learned counsel, in order to substantiate his contention, placed reliance on the case of ***Baban Shamrao Menghare vs Madhukar Shamrao Mehghare***, reported in ***2007 (1) All.M.R. 746***.

2. The learned Judge of the executing court, by passing a separate order below Exhibit 29 in R.D. No. 74 of 1963, has

directed the Collector not to proceed with the partition in respect of the suit property Block No. 390 situated at Village Gondegaon, Taluka Shrirampur and since the petitioners herein, in another application Exhibit 18, have raised the objection to the extent of land gat no. 390 and the trial court, while passing order below Exhibit 29, has called upon the decree holder to file say to the application Exhibit 29, it would be inappropriate to go into that question in the pending Writ Petition and the parties including the present petitioners can address the executing court so far as disposing of the application Exhibit 29 in accordance with law is concerned. However, the learned counsel for the petitioner, on instructions, submits that the petitioners are not claiming their right or interest in respect of the land gat no. 390 in any manner.

3. So far as the petitioners' claim of right and interest in respect of land gat no. 323 is concerned, in the light of the ratio laid down by this Court at Nagpur in the case of ***Baban Shamrao Menghare vs Madhukar Shamrao Mehghare*** (supra), particularly para 10 of the judgment, the petitioners are at liberty to file an application before the civil court to pass another preliminary decree in the light of variations of the shares due to

subsequent events and the civil court may decide the said application on its own merits in accordance with law. The Writ Petition is accordingly disposed of.

4. This Court has, by order dated 23.04.2015, granted ad-interim relief in terms of prayer clause (C). The same will remain continued till disposal of any such application, if preferred within four weeks from the date of this order, by the petitioners herein before the civil court, as discussed above.

(V. K. JADHAV, J.)

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