

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2004 OF 2018

Bapu Nagu Lohar Since Deceased Through
His Legal Heirs

...Petitioner

Versus

Maruti Nagu Lohar And Ors.

...Respondents

Mr.Pradeep M.Patil with Mr.Sachin A.Bagal, for the Petitioner.

CORAM : G.S.KULKARNI, J.

DATE : 15 February 2018

P.C. :

1. Heard Mr.Patil, learned Counsel for the petitioner. In view of the order which I propose to pass in this petition, notice of the petition need not be served on the respondents.

2. By an order dated 19 September 2015, learned Civil Judge Junior Division, Patan, Dist. Satara was pleased to appoint Advocate Mr.A.R.Malwade as a Court Commissioner to suggest two modes of partition of the house properties being subject matter of the decree. Learned Court Commissioner has placed on record of the trial Court, a report dated 27 March 2017 suggesting two modes on which the suit properties can be partitioned. The petitioner had objected to the said report by filing detailed objections dated 29 April 2017. Learned trial

Judge therefore has passed the following impugned order dated 15 January 2018:-

“Read application and say. Heard. Perused report and maps. I find it is appropriate to adopt option no.2 as suggested by court commissioner in saffron colour map. Accordingly report of court commissioner is accepted.”

A plain reading of the above order clearly indicates that name of the objections which are raised by the petitioner have been taken into consideration. Also there are no reasons, setting out, as to why option no.2 has to be accepted. It appears that the order is also not clear whether all the parties to the suit were heard before the impugned order could be passed.

3. Thus, considering the nature of the order, it is in the interest of justice that the learned Civil Judge, Junior Division, Patan who is seized of the matter should reconsider the issue and while doing so take into consideration the objections which are raised by the petitioner as also of the other parties if any, and decide the issues afresh, on the report of the Court Commissioner. Needless to observe that the learned trial Judge will have to pass a reasoned order as also to hear all the concerned parties. All rights and contentions of all the parties are expressly kept open.

4. In view of the above order, the impugned order need not be acted upon and the learned trial Judge shall decide the issue afresh without reference to the impugned order dated 15 January 2018.

5. Writ petition is accordingly disposed of in the above terms.

No costs.

(G.S.KULKARNI, J.)