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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4808 OF 2018

Nirmala Atmaram Patil and ors	...	Petitioners.
V/s.		
Sudhir Shriram Patil and ors	...	Respondent

Mr. Pravin D. Patel, I/by Mr. Sachindra B. Shetye, for
petitioners.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th APRIL, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner.
- 2] By this petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 3rd February, 2018, passed by Civil Judge Senior Division, Ratnagiri, below the Applications Exh.Nos 1 and 8 in Regular Darkhast No.23 of 2016.
- 3] This application at Exh.8 was filed by the petitioners, who are the judgment debtors before the Executing Court. Admittedly the decree for partition has been passed and confirmed upto the District Court. No Second appeal is preferred against the said decree and it has become final.

4] Accordingly the Executing Court has appointed the Court Commissioner for suggesting the partition of the suit house by metes and bounds. The Court Commissioner has filed his report and suggested the partition by different options. Out of that, option No.1 was accepted by the Executing Court, directing that possession warrant be executed accordingly.

5] The Petitioners had objected to the report of the Court Commissioner and contended that the partition suggested is not equitable. The Executing Court has considered the objection and thereafter allowed the execution to take place. There is nothing on record to show as to how the partition suggested by the Court Commissioner is not equitable.

6] The only contention raised is that the suit house was built about 70 to 80 years back. It is of mud and stone. The option suggested by the Court Commissioner is to remove the wall, by closing door of the existing house and directing new wall to be constructed, which according to the petitioners will damage the entire standing structure of the house.

7] In my considered opinion when the partition has to take place by division of the house, then some alterations are required to be made. After all, under the supervision of Court Commissioner, the possession warrant is to be executed. Hence it follows that he will

take requisite care for carrying out such division of the suit house. Thus, no reason is made out to interfere in the impugned order passed by the trial Court and thereby to deprive the respondents -Decree Holders, from getting the fruits of the decree of their suit which was filed in the year 2000.

8] The Writ Petition, therefore, being without merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]