

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

WRIT PETITION NO. 1835 OF 2018

Nabilal Amir Maner & Ors.

.... Petitioners

Versus

Mahabubabi Hasan Maner
(since deceased through legal heirs)
and Ors.

.... Respondents

Mr. Prajakt M. Arjunwadkar for Petitioners.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.
DATE : 20TH MARCH 2018**

P.C.

. Heard learned Counsel for the Petitioners.

2. By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 14th November, 2017 passed by the Joint Civil Judge Junior Division, Kurundwad below Exh.81 in Regular Darkhast No. 9 of 1993.

3. The Petitioners are the Judgment Debtors before the executing court and they have filed Application Exh. 81 contending therein that this being a decree of partition and since a preliminary decree, the Respondent-Decree Holder should have filed an application for final decree. In stead of that, she has filed directly the execution of the decree, and therefore, such execution petition is not tenable.

4. Accepting the contention of learned Counsel for the Petitioners, the executing court vide its impugned order has converted the execution petition into final decree application by exercising its inherent power under Section 151 of the Code of Civil Procedure.

5. In view thereof, in my considered opinion, the Petitioners should not have any grievance at all. As a matter of fact, there should not be any reason also for filing this Writ Petition when the contention of the Petitioners is accepted and the execution proceeding is converted into final decree application.

6. The Writ Petition being without merits, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]