

5] The petitioners herein are the original judgment debtors. In Regular Civil Suit No.532 of 2002, the consent decree came to be passed between the petitioners and respondents on 29.04.2013. On the basis of the said consent decree, respondent Nos. 1 and 2 herein filed Final Decree Application No.12 of 2014 praying for execution of the consent decree. In the said Final Decree Proceeding, the Executing Court, issued notices to the petitioners.

6] The petitioners herein appeared and resisted the execution proceeding on the ground that such proceeding cannot be tenable having regard to the terms and conditions of the consent decree according to which the parties have already accepted the fact that as a result of the compromise arrived at between them, their shares are separated and they are in possession of their respective shares. Hence it was contended that the Final Decree Proceeding cannot be maintainable.

7] However, when the application for appointment of Court commissioner for the purpose of suggesting equitable portion of the house properties was filed, on 9.3.2015 the order of appointing Court Commissioner was passed, with the consent of the petitioners. Accordingly, the Court Commissioner was appointed. He has submitted his report suggesting proposed partition of the house properties. The petitioners objected to the same and hence they were

given sufficient opportunity to lead evidence to substantiate their contention about the Court Commissioner's report being not proper.

8] The impugned order passed by the trial Court clearly goes to show that despite repeated opportunities, petitioners failed to adduce evidence and as a result thereof, vide its order dated 17.3.2017, the Executing Court issued possession warrant directing the bailiff to carry out partition, as suggested by the Court Commissioner.

9] On 21.7.2017, the bailiff visited the site but could not execute the warrant and hence again on 17.8.2017, the Executing Court directed the bailiff to execute the possession warrant after removal of the lock and if necessary by taking assistance of police.

10] At this stage, this writ petition is filed challenging the maintainability of the Final Decree Proceedings on the ground that the decree passed by the trial Court in the suit on the basis of consent terms clearly goes to show that all the properties were already partitioned and separate shares were allotted to the concerned parties and they had also accepted that they are put in possession of their respective shares. It is submitted by learned counsel for the petitioners that when the decree of partition is based on the basis of compromise arrived at between the parties, this consent decree is itself a final decree especially when in the said decree, the parties are

admitting that they are put in possession of their respective shares. Hence, according to learned counsel for petitioners, nothing further remains for filing of Final Decree Proceeding for the purpose of execution of such decree.

11] In this respect learned counsel for the petitioners has drawn attention of this Court to the definition of “decree”, laid down in section 2(2) of the Code of Civil Procedure to submit that decree can be preliminary or final, or partly preliminary or partly final. As per the Explanation to said section, decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is urged that this Explanation under sub section (2) of section 2 of the CPC is more than sufficient in this case to hold that as final adjudication was already arrived at between the parties and the suit was completely disposed of in view of the consent decree, admitting allotment of shares and possession also on the basis of separate shares, nothing further remains to be done in the proceeding. Therefore, it was not be proper on the part of Executing Court to entertain Final Decree Proceeding.

12] However, this submission of learned counsel for the petitioners cannot be accepted in view of the judgment of the Apex Court in **Bimal Kumar and another -vs- Shakuntala Debi and others [(2012) 3 SCC 548]**. The facts of this authority are identical

to the facts of the present case in the sense that in that case also in the partition suit parties had entered into a compromise and clearly admitted that they were in separate and exclusive possession of their respective shares, the same had already been allotted to them. It was also admitted that as they were in possession of their respective shares and therefore, no final decree proceeding or execution was required to be filed. The compromise terms even did not contain any clause regarding future course of action. It was also found that the parties were absolutely conscious and rightly so, that their rights had been fructified and their possession had been exclusively determined. They were well aware that the decree was final in nature as their shares were allotted and nothing remained to be done by metes and bounds. Their rights had attained finality and no further enquiry from any spectrum was required to be carried out. It was found that the whole thing had been embodied in the decree passed on the foundation of compromise. The decree came to be passed on the bed rock of the compromise in entirety from all angles leaving nothing to be done in the future. The curtains were really drawn and the Court gave the stamp of approval to the same. Accordingly, it was held that it being a final decree, it was immediately executable.

13] In the said judgment, distinction between preliminary and final decree was also considered and it was held that the decree

drawn up to incorporate such final determination of rights of parties, is clearly a final decree, which can be executed.

14] In the present case also, the petitioners and respondents herein, while arriving at the consent decree, have admitted that they are in separate and exclusive possession of the property and same had already been allotted to them, as such the decree has attained finality. As no further course of action is required, it has become a final decree. The execution of such final decree is tenable. Hence no fault can be found in the impugned order passed by the the trial Court for issuance of the possession warrant of the house properties.

15] The Executing Court has also followed the proper procedure for execution of the said decree, the execution of which is restricted only in respect of house property. As per Order 26 Rule 3 of CPC, the Executing Court has appointed the Court Commissioner for determining/suggesting separate shares. The said order shows that the petitioners have given no objection for appointment of the Court Commissioner. Accordingly the Court commissioner was appointed. He has suggested the equitable partition by metes and bounds of the shares to be allotted separately to each of the parties. Thereafter repeated opportunities were given to the petitioners to challenge the said report by leading evidence.

16] The impugned order passed by the Trial Court shows that despite such opportunities, petitioners did not adduce evidence to show how Court Commissioner's report is not suggestive of equitable partition and therefore, the the Executing Court issued possession warrant. The petitioners obstructed to execution of warrant and hence the Executing Court considering conduct of petitioners, passed subsequent order dated 17.8.2017, directing the bailiff to execute the same by removing lock and for that purpose, if necessary, to take assistance of the police.

17] The perusal of the impugned order passed by the trial Court therefore, does not even whisper of any illegality, much less irregularity. therefore, writ petition is being without any merits, hence it stands dismissed.

18] Rule stands discharged.

[DR.SHALINI PHANSALKAR-JOSHI, J.]