

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1517 OF 2019
(Ramesh Shankar Bhagwat Vs. Babanrao Baburao Rokade)

Mr.N.V.Gaware, learned Advocate for the petitioner.
Mrs.C.S.Deshmukh, learned Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/02/2019

PER COURT :

1. This matter was heard extensively on 04/02/2019.
2. The gamut of the submissions of the petitioner is that though he was a tenant in the eviction proceedings, he has now purchased 54 Sq.Ft. out of the 240 Sq.Ft. rented premises, out of the total suit property of 104 Sq.Mtrs. in C.T.S.No.524, from Janabai who is the real sister of the original plaintiff. It is clarified that Janabai has projected to the petitioner that she has received 1/36th share in the suit property in view of the verdict in Spl.Civil Suit No.187/1997. She had moved an application for seeking final decree and the same has been dismissed in default.
3. Learned Advocate for the respondent submits that though Janabai can be said to have received 1/36th share vide the judgment

and decree of the Trial Court, the suit property being a house property, is indivisible and such 1/36th share of Janabai cannot be carved out.

4. In my view, when the ancestral property of such nature is apportioned as per the shares of the blood relatives, if any share cannot be carved out in favour of a beneficiary, the other beneficiaries who keep such a share as the property is indivisible, will have to compensate that beneficiary whose share cannot be carved out and handed over, by payment of money.

5. Learned Advocate for the petitioner submits on instructions that the petitioner would restrict his claim only to 54 Sq.Ft. of the suit property and would not stake a claim to the remainder suit property. He runs a business in the tenanted premises and seeks time to move his belongings to the 54 Sq.Ft. area so as to hand over the possession of the remaining property.

6. Learned Advocate for the respondent submits that 2 weeks time may be granted so that the petitioner can collect his belongings and his business material and move it to the 54 Sq.Ft. within 2 weeks. Learned Advocate for the petitioner prays for 4 weeks.

7. In view of the above, this petition is disposed of by permitting the petitioner to collect his belongings and settle them in an area admeasuring 54 Sq.Ft. in the suit property and handover the remainder property within the said period of 4 weeks (till 05/03/2019) from today. There shall be no extension of time. The possession warrant issued by the Executing Court would be kept in abeyance till 05/03/2019 since the petitioner would comply with this order within the said period.

8. Needless to state, whether such 54 Sq.Ft. area is divisible or not, is left to the Court before which such proceedings can be or have been initiated. The said Court shall decide the said issue in accordance with the rights of the parties and the law applicable. Ultimately, the right of the petitioner would flow from the right of his vendor Janabai.

9. The parties are at liberty to work out the pending RCA No.355/2017 expeditiously and the Appellate Court would attempt to decide the said appeal as expeditiously as possible.

(Ravindra V.Ghuge, J.)