

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6018 OF 2019
(Mujeebuddin s/o Hafiz Qamaruddin and others Vs. Hamiuddin s/o
Hafiz Qamruddin and others)

Mr.A.A.Khan, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/06/2019

PER COURT :

1. I had heard the learned Advocate for the petitioners on 19/06/2019 and had passed the following order :-

“1. The learned Counsel seeks time to study the Code of Civil Procedure and the relevant law.

2. Stand over to 25th June, 2019 for passing orders.”

2. Today again when the learned Advocate was called upon to point out from the Code of Civil Procedure certain provisions as regards the definition of a preliminary decree and those in support of his contentions, despite repeatedly calling upon him, learned Advocate has decided not to open the Code of Civil Procedure and point out any provision.

3. The record reveals that the judgment of the Trial Court dated

26/06/2003 is a preliminary decree in RCS No.967/1999. The decree holder moved a proceeding in 2006, which was registered by the Office of the Civil Court as being a Reg.Dkt.No.60/2006. It is specifically mentioned on the second page of the said proceeding that the decree holders are applying for the finalization of the decree of partition and separate possession. It is also mentioned in paragraph No.9 of the said application that the Court may proceed to finalize the preliminary decree by appointing a D.L.R. or a technical person as a Court Commissioner.

4. The petitioner/judgment debtor had filed an application Exh.83 before the concerned Court making a grievance that the proceedings have been registered as a regular darkhast and there can be no execution of a preliminary decree until it is converted into a final decree. Copy of Exh.83 is not placed on record. An application was previously filed by the same petitioner at Exh.79, which was decided by the Civil Court on 01/09/2018. A copy of Exh.79 as well as the order dated 01/09/1998, have also not been placed on record.

5. By the impugned order dated 07/12/2018, the Trial Court has recorded in paragraph No.2 that the registration of the suit which is an administrative act, has been incorrectly done as a regular

darkhast. The office of the Court has committed a mistake and the said application rightly mentions that it is a request for finalization of the decree. The Court, has therefore, recorded that it would be considering the said application No.60/2009 as an application for finalization of a decree notwithstanding that it has been incorrectly registered as a regular darkhast.

6. In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous. The Civil Court has ensured that the ends of justice are met and a mere administrative act of its Office of incorrectly registering the proceedings should not lead to depriving the decree holders of the fruits of the decree which is delivered on 26/06/2003, about 16 years ago.

7. This petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)