

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5924 OF 2012**

Shri. Kundalik Bhawana Patil (decd.) through LR's Versus Dadu Bhawana Patil (decd.) without LR's and ors.	.. Petitioners .. Respondents
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Mr. Rajesh S. Parab for petitioners.
Mr. S.V. Sadavarte for respondent No.4.

CORAM : K.K. TATED, J.

DATE : 28 FEBRUARY 2019.

P.C:-

- . Heard learned Counsel for parties.
2. As per order dated 12.09.2012, matter is taken on board for final hearing at the stage of admission itself.
3. By this writ petition under Article 227 of the Constitution of India, petitioner is challenging the order dated 25.04.2012 passed by the learned Joint Civil Judge, Junior Division, Kagal below Exhibit-42 in Final Decree Application No.1 of 2009 dismissing their application for sending the Judgment and Decree dated 21.03.1997 in Regular Civil Suit No.86 of 1996 to the concerned District Collector, Kagal under Section 54 of Civil Procedure Code, 1908.

4. The learned Counsel for the petitioner submits that in the present proceedings, the respondent No.4/original plaintiff has filed Regular Civil Suit No.86 of 1996 in the Court of learned Civil Judge, Junior Division, Kagal for partition and separate possession of properties. That suit was decreed by Judgment and Decree dated 21.03.1997.

5. The learned Counsel for the petitioner submits that as the respondent No.4/original plaintiff failed and neglected to make appropriate application for sending the Judgment and Decree to the District Collector, Kagal for effecting partition by metes and bounds as per provisions of Section 54 of Civil Procedure Code, 1908, the petitioner filed application below Exhibit-42 to that effect. He submits that at the time of rejecting their application below Exhibit-42, the learned Joint Civil Judge, Junior Division, Kagal erred in coming to the conclusion that, petitioner has no right to file such type of application as his shares were not determined by the Court at the time of passing the Judgment and Decree. The learned Counsel for the petitioner submits that the Court below failed to appreciate that the petitioner has filed application only for complying the clause No.3 of the Judgment and Decree dated 23.03.1997. He submits that actually it is the

duty of registry of the court to take appropriate steps for sending the decree to the concerned District Collector as per Section 54 of the Civil Procedure Code, 1908. Hence, the impugned order is required to be set aside by allowing their application and directing the Civil Court to send the Decree dated 21.03.1997 in Regular Civil Suit No.86 of 1996 to the District Collector, Kagal for effecting partition by metes and bounds as per provisions of Section 54 of Code of Civil Procedure. He submits that if the present writ petition is not allowed, irreparable loss will cause to them. He further submits that their application for final decree is pending for hearing on its own merits.

6. On the other hand, the learned Counsel appearing on behalf of respondent No.4/original defendant vehemently opposed the present writ petition. He submits that the trial Court rightly rejected the petitioner's application below Exhibit-42. He submits that bare reading of the Judgment and Decree dated 21.03.1997 shows that shares are not determined for petitioner/original defendant. Therefore, the executing Court cannot go beyond the decree. Therefore, there is no question of allowing the present writ petition.

7. I heard both the sides at length. It is to be noted that bare reading of operative part of Judgment and Decree dated 21.03.1997 shows that the Decree is required to be sent to the District Collector, Kagal for effecting partition by metes and bounds as per Section 54 of Civil Procedure Code, 1908. The operative part of the Decree reads thus :

- “1. The suit is partly decreed with costs;
2. It is hereby declare that the Plaintiff's have 2/5th share in the suit properties excluding the house property bearing No.333;
3. A copy of decree regarding suit lands be sent to the District Collector, Kolhapur for effecting partition by metes and bounds as per provisions of Section 54 of Civil Procedure Code;
4. The partition of house property excluding hearing No.333 be effected through the Court Commissioner;
5. The Defendants are hereby restrained by permanent injunction from obstructing plaintiffs' possession over the suit properties excluding house property bearing No.333.
6. A preliminary decree in this regard be drawn accordingly.
7. A decree be drawn accordingly.”

8. It is the duty of either plaintiff or the registry to send the Judgment and Decree under Section 54 of Civil Procedure Code, 1908 to the concerned District Collector. As the plaintiff failed and neglected to take appropriate steps for several years, petitioner/original defendant No.3 filed application below Exhibit-42 on 10.01.2012.

9. It is to be noted that the trial Court failed to appreciate the fact that, it is the duty of either plaintiff and or the registry to send the decree under Section 54 of the Civil Procedure Code, 1908 for effecting partition. Therefore, there is no question of determining the shares by the Court at the time of passing the order for sending the Decree to the Collector, Kagal under Section 54 of Civil Procedure Code, 1908. In view of these facts, I am of the opinion that the petitioner has made out case for allowing this writ petition. Hence, following order :

a) Order dated 25.04.2012 passed by the Joint Civil Judge, Junior Division, Kagal below Exhibit-42 in Final Decree Application No.1 of 2009 is set aside.

b) Trial Court is directed to send the Decree dated 21.03.1997 passed by the Civil Judge, Junior Division, Kagal in Regular Civil Suit No.86 of 1996 to the District Collector, Kagal as per the provisions of Section 54 of Civil Procedure Code, 1908 for effecting partition by metes and bounds as earlier as possible but in any case on or before 30.04.2019.

- c) Parties to act on authenticated copy of this order.
- d) Writ petition stands allowed accordingly.
- e) No order as to costs.

(K.K. TATED, J.)