

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

38 WRIT PETITION NO.2454 OF 2020

MADHAV VENKATRAO PATIL
VERSUS
JANARDHAN VENKAT PATIL AND OTHERS

...
Advocate for Petitioner : Mr. Deshpande Amit S.

...

CORAM: ROHIT BABAN DEO, J.

Date: FEBRUARY 10th, 2020

...

PER COURT :-

1 The petitioner assails the order dated 17.02.2019 rendered by the Civil Judge, Junior Division, Ausa in RD No.3/2018 whereby the decree in RCS No.446/86 for partition and separate possession of agricultural land is forwarded to the Collector as is the mandate of Section 54 of the Civil Procedure Code.

2 The submission of learned counsel for the petitioner is that the petitioner is the defendant No.3 in the suit for partition and separate possession. The decree dated 16.02.1987 was compromise decree. The decree holder sought to correct an error in the decree. The Trial Court allowed the said application. However, the correction in the decree was challenged in Writ petition 2351/2009 which is allowed and the correction has been quashed. The order of the High Court is not interfered with by Honourable Apex Court.

The learned counsel for the petitioner would submit that since the High Court and the Honourable Supreme Court permitted the defendants No.4 and 5 to raise objections, the decree cannot be executed.

3 I have perused the objection preferred by defendant No.3 to the execution of the decree. The application is most unintelligible and it is really difficult to comprehend what is the exact objection. I have requested the learned counsel for the petitioner to assist the Court in understanding the objection. The learned counsel for the petitioner states that the execution is delayed. The submission is considered only for rejection. The compromise decree is a preliminary decree and the question of attracting the provisions of the Limitation Act does not arise.

4 The learned counsel then submits that the defendants No.4 and 5 are granted liberty by the High Court to take-out an appropriate motion for correction of the decree. It is not something with which the petitioner-defendant No.3 is concerned. It is left to defendants No.4 and 5 to exercise the liberty or to give up the contentions that the compromise decree needs correction.

5 The petition is misconceived, merit-less and is dismissed.

(ROHIT BABAN DEO, J)