

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11745 OF 2021

Sudhakar S/o Bhagwanrao Nagargoje
Since died through his L.Rs.

1-A) Vasanti W/o Sudhakar Nagargoje,
Age : 57 years, Occ. Household,

1-B) Hrishikesh S/o Sudhakar Nagargoje,
Age : 25 years, Occ. Agri.,

Both R/o Ahmedpur, Taluka Ahmedpur,
District Latur.

1-C) Shreya Pankaj Patil,
Age : 34 years, Occ. Household,
R/o Niphad, Tq. Niphad, Dist. Nasik.

1-D) Radhika Hrishikesh Utpat,
Age : 30 years, Occ. Household,
R/o Pune.

.. PETITIONERS

VERSUS

- 1) The District Collector,
Latur, District Latur.
- 2) The Tahsildar,
Ahmedpur, District Latur
- 3) The Deputy Superintendent of
Land Records, Ahmedpur,
District Latur.

..RESPONDENTS

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Mr.Sachin S. Deshmukh, Advocate for the petitioners
Mr.D.R.Kale, Government Pleader, for respondents.

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**CORAM : DIPANKAR DATTA, CJ &
MANGESH S. PATIL, J.**

DATE : 22/10/2021

ORAL JUDGMENT : [PER MANGESH S. PATIL,J.] :-

1] Rule. Rule is made returnable forthwith. The learned Government Pleader waives service for all the respondents. At the request of the parties, the matter is heard finally at the stage of admission.

2] The petitioners are aggrieved by refusal of the respondents to undertake measurement of the properties in terms of a compromise decree dated 12/09/2003 passed in Regular Civil Suit No.205/2003 between the two brothers Sudhakar and Prabhakar. The petitioners are the heirs of Sudhakar.

3] Sudhakar applied to the Tahsildar for measurement of one of the suit properties bearing survey no.114 (Exh-B). The Tahsildar by his communication (Exh.C) asked the Deputy Superintendent of Land Records to act on the request of Sudhakar. By his communication (Exh-D) the Deputy Superintendent of Land Records informed the Tahsildar that in view of the

provisions of Section 85(2) of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as the Code) he could measure the land either on the basis of a direction of the civil court or with consent of all the co-owners. He also informed that there was an objection raised by Prabhakar to the effect that there was an error in the decree. Later on Sudhakar through his advocate issued a notice to the Collector and the Tahsildar to undertake the exercise of measurement pursuant to the compromise decree. The Naib Tahsildar by his communication in reply to the notice narrated the aforementioned history and suggested that appropriate orders be obtained for such measurement from the civil court which decreed the suit in terms of the compromise.

4] Section 85 of the Code reads as under :

“85. Partition.

(1) Subject to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, a holding may be partitioned on the decree of a civil Court or on application of co-holders in the manner hereinafter provided.

(2) If in any holding there are more than one co-holder, any such co-holder may apply to the Collector for a partition of his share in the holding :

Provided that, where any question as to title is raised, no such partition shall be made until such question has been decided by a civil suit.

(3) [The Collector] may, after hearing the co-holder, divide the holding and apportion the assessment of the holding in accordance with the rules made by the State Government under this Code.

(4) [* * * *]

(5) Expenses properly incurred in making partition of a holding paying revenue to the State Government shall be recoverable as a revenue demand in such proportion as the Collector may think fit from the co-holders at whose request the partition is made, or from the persons interested in the partition.”

5] As can be seen from sub-section 1, a partition can be effected on the basis of a decree of a civil court or on an application of the co-holders. True it is that by virtue of the proviso to sub section 2, whenever any question as to title is raised, no such partition can be effected until the question is decided by a civil suit.

6] It is a matter of record that the Regular Civil Suit No.205/2003 was decided in the form of a compromise deed entered into between the two brothers Sudhakar and Prabhakar. It is, therefore, quite apparent that it was a decree in terms of a compromise ordered by the civil court. Therefore, the stand of the respondents that the measurement cannot be carried out for want of a decree of a civil court, to our mind, is not sustainable on facts.

7] It does appear that the defendant Prabhakar raised some dispute before the Deputy Superintendent of Land Records pointing out some error in the decree. We need not go into these factual disputes. The fact remains that there is a decree of a civil court and the petitioners made an innocuous request to undertake the measurement in accordance with the decree. Therefore, by virtue of the provisions of Section 85 of the Code, the respondents were under statutory obligation to carry out the measurement to demarcate the shares in accordance with this compromise decree.

8] Needless to state that if there is really some error in the decree and the measurement or partition cannot be effected strictly in terms of the decree, the respondents may for some objective reason refuse to effect the partition. However, that can happen only if the exercise of carrying out measurement is undertaken. It appears that without even indulging into that exercise, the respondents have refused to carry out the measurement on unsustainable grounds.

9] We, therefore, allow the writ petition. The respondents shall undertake measurement under Section 85 of the Code in terms of the compromise decree in Regular Civil Suit No.205/2003 on petitioners depositing necessary

expenses under Section 85(5) of the Code. All such exercise shall be completed as early as possible and in any event, within a period of three months of petitioners depositing the expenses.

10] The Rule is made absolute in above terms.

[MANGESH S. PATIL, J.]

[CHIEF JUSTICE]

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