

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1680/2019

Kamalakar Parasram Pise and ors...Versus... Bandu Bhojraj Bangde and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.S.Kulkarni, Advocate for petitioners.
Shri M.R.Joharapurkar, Advocate for Respondent Nos. 1 to 6
Smt. Barabde, AGP for Respondent No.7

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/09/2021

1] Mr. Kulkarni, learned counsel for the petitioner, submits that Regular Civil Suit No.1203/06 (Bandu Vrs. Shantabai and ors), a suit for partition, came to be decreed on 30.04.2010, by the trial Court, in which the plaintiff, was held entitled to 1/20th equal share in the suit property in Schedules A and B of the plaint.

2] The defendants challenged the decree of the trial Court by filing Regular Civil Appeal No. 461/10, in which the original plaintiff also filed a cross objection. By a decree dated 16.08.2014, the appeal came to be dismissed and the cross-objection came to be allowed partly, declaring that the plaintiff was having 3/150th share in the suit properties. Second Appeal No. 449/14 by the original defendant came to be dismissed on 20.06.2018, as a result of which the

judgment passed by the learned Appellate Court in First Appeal No.451/2010, dated 16.08.2014 became final. A precept under Section 54 of C.P.C was accordingly sent to the learned Tahsildar on 01.08.2017, which directed the learned Tahsildar to make partition and separate possession of the suit property as per the decree of the court dated 30.04.2014.

3] It is submitted by Mr. Kulkarni, learned counsel for the petitioner that there is no decree dated 30.04.2014 and what was extant and prevailing between the parties was the decree passed by the Appellate Court dated 16.08.2014. He further submits that the learned Tahsildar, in pursuance to the precept, divided the entire property equally, which was not permissible, as the division had to be in consonance with the judgment of the Appellate Court, dated 16.08.2014.

4] Mr. Joharpurkar, learned counsel for Respondents/Original Plaintiffs agrees to the position that there is no such decree dated 30.04.2014, as mentioned in the precept dated 01.08.2017 and therefore, the division by the learned Tahsildar of the scheduled property in equal parts was incorrect.

5] In view of the above admitted position, the precept dated 01.08.2017 and the subdivision made in

pursuance thereto, cannot be sustained and the same is therefore, quashed and set aside. The learned Trial Court, which passed the decree dated 30.4.2010, is directed to prepare a precept in terms of the decree as passed in Regular Civil Appeal 461/2010, dated 16.08.2014, and send it to the Tahsildar, who shall act in consonance thereto.

6] The petition is allowed in the above terms. Needless to mention that if any person has a right or claim in the scheduled property in pursuance to the judgment of the Hon'ble Apex Court in ***V.Sharma vs. R. Sharma*** 2020 (9) SCC 1, the same shall be open to be agitated.

JUDGE

Rvjalit