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

WRIT PETITION NO.12236 OF 2019

RAMESH GOROBA HALE
VERSUS
MAHADEO GOROBA HALE AND OTHERS

...
Mr R. R. Deshpande, Advocate h/f Ms P. R. Deshpande, Advocate
for petitioner;
Mr A. N. Irpatgire, Advocate for respondent No.1
Ms. P. V. Bodke Patil, Advocate for respondent Nos.3(c) & 3(e)

CORAM : SMT. BHARATI DANGRE, J.

DATE : 7th January, 2022

PER COURT:

1. The petitioner is the judgment debtor in Regular Darkhast No.51/1993, arising out of a decree passed in Regular Civil Suit No.401/1987, filed by the respondent No.1, seeking relief of partition and separate possession. He is aggrieved by an order passed by the learned Civil Judge Junior Division, Latur, in Regular Darkhast No.51/1993, which rejected the application filed by the petitioner on a very strange ground, since it is opposed on equally strange reasons.

2. Regular Civil Suit No.401/1987 came to be filed by the respondent No.1, seeking relief of partition and separate possession in respect of suit property, situated in Shivaji Chowk

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Latur. In the said suit, apart from his own father and mother, the petitioner and his two brothers were also impleaded as defendant Nos.3 to 5. The said suit was decreed with a declaration that the plaintiff, defendant Nos.1 to 5 are entitled to 1/6th share each in the suit property. The plaintiff was held entitled to the partition and separate possession of his 1/6th share and the suit property was directed to be partitioned by metes and bounds, through the Court Commissioner. Preliminary decree was directed to be drawn accordingly. In furtherance of the same, the preliminary decree was drawn in the year 1993, but before the final decree could be drawn, the defendant No.1 in the suit, Garoba Hale, expired on 02/12/2006, whereas Gayabai, the defendant No.2 in the suit expired on 28/10/2000. The final decree was drawn on 29/08/2007, after a demise of two defendants, however, failed to acknowledge their death and their 1/6 th share came to be determined in the final decree.

3. The petitioner herein i.e. defendant No.5 / the judgment debtor No.5, moved an application on 11/09/2017, inviting attention of the Executing Court to the aforesaid event and sought issuance of second preliminary decree due to change of subsequent events. A relief was also sought to the effect that in

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order to effect the partition, the Panel Engineers, Architect and Draftsman should be appointed as a Commissioner to the proposed partition among the survivors, while taking into consideration the marketable value of the suit house and shops, which are directed to be partitioned amongst the co-shares.

It is this application which is rejected by the impugned order, which is challenged in the writ petition.

4. Perusal of the impugned order would reveal that the only ground on which the application was objected, was the argument advanced on behalf of the opposition, stating that they are happy with their share of 1/6th which has been granted to them under the decree and they are not interested in further division of the property on the demise of their parents. This reasoning I have found to be strange since though the respondents are getting additional shares on account of demise of their parents, they are refraining from accepting it and from the arguments of the learned Counsel for the respondents, the reasoning is apparent, being the delay in execution of the decree. It is not that they are not desirous of receiving the share but they are apprehensive that since the decree was passed in the year 1993 and till date they are

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kept away from its fruits, the further delay would make the entire effort worthless.

5. The apprehension expressed by the learned Counsel cannot be said to be unfounded, since it is a well known fact that the decrees which are passed take generations to be executed. This, however, can be avoided in the present case, as now the plaintiff and the defendants agree to the effect that they shall jointly request the Executing Court to appoint a technical expert for the purpose of carrying out the measurement, who shall act as a Commissioner and they would also make a request that the Commissioner be directed to submit report in a time bound manner, so that the apprehension for the Counsel for the respondents can be redressed. The learned Executing Court shall also bear in mind that he is executing a decree passed in the year 1993 and without delving deep into the technicality of the issues, he shall make every endeavour to see that the parties enjoy the fruits of the decree.

For the aforesaid reasons, the impugned order is set aside with the consensus being arrived in between the parties as

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recorded above and a joint request being made to the Executing Court, in furtherance of the said undertaking.

The Executing Court shall make every endeavour to dispose of the Regular Darkhast pending before it within a period of three months from today.

With the aforesaid direction, writ petition is disposed of.

(SMT. BHARATI DANGRE, J.)

sjk