

Chitra Sonawane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.4080 OF 2017

1. Tanaji Narsu Khot & Anr.
Age 53 yrs, Occ: Agriculture.

2. Vilas Narsu Khot
Age: Adult Occ: Agriculture
(both residing at Sidhewadi,
Taluka-Miraj, Dist.Sangli) ... Petitioners.

Vs.
Shamrao Mhallappa Gejge (Vhalar)
& Ors. **.... Respondents.**

Mr.Ashok Tajane, Advocate i/b Padmanabh D. Pise for the petitioners.
Mr. Pramod R. Arjunwadkar for respondent Nos.1 to 3.

CORAM : N.R. BORKAR, J.

DATE : 9th MARCH, 2022.

PC.:

1. This petition takes an exception to the order dated 18.03.2016 passed by the Civil Judge, Junior Division, Miraj, in final decree proceeding No.7 of 2015.

2. The respondent nos.1 to 3 had filed a suit for partition against the petitioner no.1 and others. The suit was decreed and preliminary decree

was passed. Against the preliminary decree, the petitioner no.1 had filed appeal. Said appeal was withdrawn on the ground that the parties had arrived at an amicable settlement. Thereafter, final decree proceeding came to be filed.

3. Learned counsel for the petitioners submits that petitioner no.1 after his appearance in the final decree proceedings with a view to resist the final decree proceeding submitted the reply, however, the trial court refused to take the said reply on record and passed the order impugned that precept be sent to the Collector for partition of the suit properties. It is submitted that the trial court be directed to accept reply/objections of the petitioners and order impugned be set aside.

4. On the other hand, the learned counsel for the contesting respondents submits that no settlement was arrived at between the parties. Appeal was simplicitor withdrawn. It is submitted that the petitioners have no locus to file reply/objections to the final decree proceedings. He, accordingly, submitted that the petition be dismissed.

5. Considering the facts and circumstances it would be appropriate to permit the petitioners to file the reply/objections in final decree proceedings.

6. In the result, following order is passed.

ORDER

1) The petitioners are permitted to file their reply/objections to the final decree proceedings within two

weeks from today.

2) The trial court shall endeavour to decide the said objections as early as possible, in any case within 3 months from the date of filing of such objections, on their own merits. All the contentions are kept open.

3) Needless to mention that the trial court shall recall the order impugned if the objections are accepted and the final decree proceeding is dismissed.

4) The petition is disposed of in above terms.

(N.R. BORKAR, J.)

