

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

WRIT PETITION NO.5357 OF 2014

**ROHINI MURLIDHARRAO RAJESHWARKAR DIED THROUGH L.RS.
MURLIDHAR KHANDERAO RAJESHWARKAR AND OTHERS
VERSUS
ARVIND SHARAD DESHPANDE AND OTHERS**

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Advocate for Petitioner : Mr. H.V. Tungar, Advocate h/f
Mr. C.R. Deshpande

Advocates for Respondent Nos.2 & 3 : Mr. A.S. Deshmukh and
Mr. S.A. Deshmukh

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th JULY, 2023

PER COURT :

1. Petitioner/judgment debtor is aggrieved by the order dated 11/04/2014, passed by learned Civil Judge, Senior Division, Basmatnagar, below Exhibit-21 in Regular Darkhast No.09/2012, thereby allowing the application filed by respondents/deed holders and directing the Tahsildar, Basmat, to take necessary entry in the revenue record.

2. Respondent Nos.1 to 4/plaintiffs filed Special Civil Suit No.86/1987, in which petitioner was defendant No.2. The suit was decreed on 23/02/1989 and it was declared that plaintiff Nos.1 to 4 have 4/5th share in the suit property and the sale deed dated 23/05/1982 executed by defendant No.1/respondent No.5, in favour of defendant No.2/petitioner is not binding on the share of

plaintiffs/respondent Nos.1 to 4. Plaintiffs are held entitled to be in joint possession with petitioner/defendant No.2. If the petitioner was not satisfied with the joint possession, she was directed to file suit for general partition within 60 days from the date of order. Petitioner has not filed suit for partition. Respondent Nos.1 to 4/decree holders filed Regular Darkhast No.05/2007, which is re-numbered as Regular Darkhast No.09/2012, against petitioner and respondent No.5 i.e. judgment debtors, praying that the decree may be transferred to the Collector, Parbhani (Hingoli), for effecting partition of the properties described in the decree and for delivery of possession to the decree holders, of their respective shares to the extent of 4/5th share each and the decree for amount may be executed by attachment and sale of the judgment debtors' movable and immovable properties and realised amount may be paid to the decree holders.

3. By filing application Exhibit-21 in the execution petition, respondents/decree holders sought direction to the Tahsildar, Basmat, that in 7/12 extract of the suit property, their 4/5th share may be recorded. Executing Court directed decree holders to mention provision under which said application is filed. Judgment debtor filed say stating that Executing Court cannot direct Tahsildar to take revenue entry. The Executing Court allowed the application

and directed Tahsildar, Basmat, to take necessary entry in the review record in respect of 4/5th share of the decree holders in respect of property bearing Gut No.274, admeasuring 8 H situated at Balegaon, Tq. Basmat, Dist. Hingoli, as per decree in Special Civil Suit No.86/1987. After passing of the said order, decree holders filed pursis at Exhibit-39 stating that since relief prayed in execution petition is granted, decree holders do not want to prosecute the execution application further, and hence, the execution petition be disposed of. Executing Court disposed of the execution proceedings in view of the pursis at Exhibit-39. Petitioner/judgment debtor is aggrieved by the orders passed below Exhibit-21 and Exhibit-39.

4. Heard learned advocate for petitioner and learned advocate for respondent Nos.2 and 3. Perused the memo of writ petition, annexures thereto and the impugned order.

5. Learned advocate for petitioner submits that while passing the impugned orders, the executing Court has ignored procedure prescribed under Rule 35 of Order 21. He further submits that the decree was not for partition. However, in execution petition prayer was made for partition and separate possession. Considering the decree passed by the trial Court, the said prayer could not have been made in the execution petition. He submits that executing Court cannot direct revenue officer to take entries in the revenue

record. In support of his submissions he relied on Section 4 of the Bombay Revenue Jurisdiction Act, 1876 and the decision in ***State of Maharashtra Vs. Bhikulal Mahadeo Agrawal, LAWS (BOM) 2014 (3) 134***. He, therefore, submits that the impugned orders are unsustainable and they are liable to quashed and set aside.

6. Per contra, learned advocate for respondents supported the impugned orders. He submits that since he was satisfied with the directions given by the Executing Court to the Tahsildar, he has filed pursis requesting Executing Court to dispose of the execution proceedings. Since the decree holders have filed the execution proceedings, they are entitled to seek disposal of the same.

7. It is not in dispute that the decree passed in special civil suit is not challenged by the petitioner till this date. So also, petitioner has not filed any suit for general partition. Decree is passed in the year 1989. Execution proceedings is filed by the decree holders initially in the year 2007, which was re-numbered as Regular Darkhast No.09/2012. Learned advocate for petitioner is justified in contending that prayer made in the execution proceedings was not in consonance with the decree passed by the Trial Court. However, fact remains that the decree was put in execution and in the execution proceedings application Exhibit-21 is filed seeking direction to Tahsildar. As is rightly pointed out by the

learned advocate for respondents, the said application was filed under Rule 11(2)(j)(v) of Order 21. In the judgment and decree, it is declared that plaintiff Nos.1 to 4 have 4/5th share in the suit property and sale deed dated 23/05/1982 executed by defendant No.1 in favour of defendant No.2 is not binding on the share of plaintiffs. In that view of the matter, executing Court is justified in directing revenue officers to take entry of 4/5th share of decree holders in the revenue record of the suit property. No prejudice is caused to the petitioner by the said direction.

8. There is no merit in the argument of petitioner that impugned order is vitiated for not following Rule 35 of Order 21. There is also no substance in the argument that Executing Court should not have disposed of the execution proceedings on the basis of pursis at Exhibit-39 filed by the decree holders. Admittedly, the decree holders had filed the execution proceedings and according to them decree is satisfied. Therefore, they are entitled to seek disposal of the same, which they have sought and is rightly allowed by the Executing Court.

9. Reliance placed by learned advocate for petitioner on Section 4 of the Bombay Revenue Jurisdiction Act, 1876, is misplaced and misconceived, so also, the reliance placed in *Bhikulal Mahadeo Agrawal* (supra). The Bombay Revenue Jurisdiction Act as

well as the said ruling are not applicable to the facts of the case in hand.

10. There is no illegality or perversity in the orders impugned in present petition. No case is made out by the petitioner to interfere in the impugned orders in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)