

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3068 OF 2023

Tejas Kashinath Redkar

.... Petitioner

versus

Kiran Kashinath Redkar & Anr.

.... Respondents

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- Mr. S. A. Jabbar a/w Shraddha Khandhadia, Advocate for Petitioner.
- Mr. Manish Mirpuri (Appointed Advocate by legal aid) for Respondent Nos.1 and 2.

CORAM : SARANG V. KOTWAL, J.
DATE : 28th APRIL 2023

P.C. :

1. Heard Mr. S. A. Jabbar, learned counsel for the Petitioner and Mr. Manish Mirpuri, learned counsel for the Respondent Nos.1 and 2.

2. Heard learned counsel for both the parties. By consent, this matter is decided finally at this stage.

3. The Petitioner has challenged the order dated

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03/02/2023 passed by the learned Judge, City Civil Court, Greater Bombay.

4. By the impugned order the learned Judge had not accepted Petitioner's prayer to restore the S.C. Suit No.1278 of 2020 and he further observed that the purpose of the application made by the Petitioner can be achieved by registering that application as final decree proceedings.
5. The Petitioner and the Respondents are the real brothers. The Petitioner had filed the said suit for partition of the suit property, which was a flat belonging to their parents situated in Mulund. The prayer in the suit was for partition on declaration of the Plaintiff's 1/3rd share and in the alternative if the partition was not possible, then for sale of the suit property and for the directions that the proceeds thereof to be divided equally between the Plaintiff and the Defendants as per their shares i.e. 1/3rd share each.

6. In this suit, the Defendants i.e. the present Respondents tendered an affidavit in the form of Written Statement on 25/11/2022 submitting that they were ready to give 1/3rd share to the Plaintiff/Petitioner. Therefore, the learned Judge observed that suit deserves to be decreed as per the provision of Order XII Rule 6 of CPC and the suit was decreed. It was declared that the Plaintiff was entitled for 1/3rd share in the suit property. The Defendants were directed to give 1/3rd share of the Plaintiff in the suit property. The Defendants were permanently restrained from creating third party interest in the suit property to the extent of the 1/3rd share of the suit property. Importantly, clause 5 of the order reads that the Plaintiff was directed to initiate final decree proceeding as required by law, forthwith and clause 7 mentions that the preliminary decree be drawn up accordingly. This order was passed on 25/01/2023.

7. Learned counsel for the Petitioner submitted that Order XX Rule 18 (sub-Rule 2) provides for passing of preliminary

decree declaring the rights of the parties, their interest in the property and to give such directions as may be required. Thus, according to the learned counsel for the Petitioner the suit continued or at least should have continued for passing of the final decree for further consideration. In spite of that, the registry of the City Civil Court in the case history mentioned that the suit was disposed of on 25/01/2023.

8. In this situation, the Petitioners preferred Misc. Application No.38/2023 in S.C. Suit No.1278/2020 with a prayer that the suit be restored and it be listed for drawing up of final decree and to take necessary steps in accordance with the guidelines given by the Hon'ble Supreme Court. On this application, the learned Judge passed the impugned order on 03/02/2023 by observing that the application filed by the Petitioner was required to be registered as a Misc. proceeding for the final decree proceeding. There was no necessity to restore the suit No.1278/2020. The same purpose can be achieved by registering the Petitioner's application for final

decree proceedings; as according to learned Judge, the final decree proceeding is the continuation of the suit. Learned counsel for the Petitioner relied on the observations of the Hon'ble Supreme Court in the case of ***Kattukandi Edathil Krishnan and Ors. vs. Kattukandi Edathil Valsan and Ors.*** as reported in ***2022 SCC Online SC 737***. Paragraph Nos.31, 32 and 33 of the said judgment are relevant, which are reproduced herein.

“31. Final decree proceedings can be initiated at any point of time. There is no limitation for initiating final decree proceedings. Either of the parties to the suit can move an application for preparation of a final decree and, any of the Defendants can also move application for the purpose. By mere passing of a preliminary decree the suit is not disposed of. [See: Shub Karan Bubna v. Sita Saran Bubna; Bimal Kumar v. Shakuntala Debi]

32. Since there is no limitation for initiating final decree proceedings, the litigants tend to take their own sweet time for initiating final decree proceedings. In

some States, the courts after passing a preliminary decree adjourn the suit sine die with liberty to the parties for applying for final decree proceedings like the present case. In some other States, a fresh final decree proceedings have to be initiated Under Order XX Rule 18. However, this practice is to be discouraged as there is no point in declaring the rights of the parties in one proceedings and requiring initiation of separate proceedings for quantification and ascertainment of the relief. This will only delay the realization of the fruits of the decree.

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33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo moto. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the Code of Civil Procedure. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow

the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the Code of Civil Procedure soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.”

He submitted that based on the observations of the Hon’ble Supreme Court, the learned Judge should have restored the suit.

9. Learned counsel for Respondents submitted that they do not want to enter into a long drawn litigation and they are willing to settle the matter between themselves. In fact, the share certificate shows that the Petitioner’s name is also included in the share certificate.

10. I have considered these submissions. As far as the

dispute is concerned, there appears to be consensus between the parties. However, the provisions and procedure established by law will have to be followed. By the observations of the Hon'ble Supreme Court in the aforementioned case there is clear observation that after passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the Code of Civil Procedure. The Court should proceed with the case for drawing up the final decree suo-moto. It is specifically observed that there was no need to file a separate final decree proceedings. In the same suit, the Court should allow the concerned party to file appropriate application for drawing up the final decree. This clear observation is not followed by the learned Judge in passing the impugned order. Therefore, it is necessary to set aside the impugned order and direct the learned Judge to restore the suit and take further steps in passing final decree.

11. Hence, the following order :

ORDER

The Petition is allowed in following terms :

- (i) The impugned order dated 03/02/2023 passed by learned City Civil Court, Bombay, is set aside and the S.C. Suit No.1278 of 2020 is restored to its file for taking further steps in passing the final decree.

(SARANG V. KOTWAL, J.)