

VRJ

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

WRIT PETITION NO.6218 OF 2022

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Sadhana Manik Nagarkar & Ors.

... Petitioners

V/s.

Sulabha Ratnakar Nagarkar & Ors.

... Respondents

Mr. Shriram S. Kulkarni with Mr. Shivam Gawade with
Mr. Onkar Gawade and Mr. Gauresh Khandalekar for
the petitioners.

Mr. Pavan Patil for respondent Nos.1 to 7, 8a and 9a to
9c.

Mr. Swapnil Mhatre for respondent Nos.10 to 14.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. The present writ petition poses unique question to be adjudicated by the Court. The plaintiffs pray for a relief. Defendants accept grant of partial relief. Application under Order 12 Rule 6 for passing partial decree is filed by the defendants. The plaintiffs oppose such application for grant of partial relief in their own suit. The Trial Court rejects such application. The defendants challenge order of refusal to grant relief in favour of the plaintiffs.

2. The respondents filed a suit for partition seeking three reliefs.

- (i) Partition and separate possession of their 1/3rd share in suit property;
- (ii) Partition and possession of 1/3rd share in 25% share in suit property 1(b); and
- (iii) Injunction restraining the defendants from creating third party rights.

3. The defendant Nos.1, 2, 3, 7, 8, 9, 12, 13 and 14 filed a written statement admitting in paragraph No.6 that the plaintiffs have 1/3rd share in 25% share in suit property 1(b).

4. The defendants, therefore, filed an application on 29th June 2021 to pass partial decree as regards prayer clause (b) of the plaint. The plaintiffs oppose the application by filing reply on 13th August 2021. The trial Court rejects the application based on following reasons:

- (i) The suit is for partition and separate possession;
- (ii) The partition has to be effected by metes and bounds in respect of all the properties;
- (iii) No partition can be effected in part;
- (iv) By way of interim order, such relief cannot be granted;
- (v) Though the defendants admitted claim of the plaintiffs in respect of suit property mentioned in Para 1(b); however, such partition cannot be effected at this stage.

5. On perusal of the impugned order, plaint and written statement, it appears that the reasoning of the Trial Court is

misconceived. In relation to the suit for partition, preliminary decree adjudicates shares of the parties to the suit. Final decree adjudicates which portion as per preliminary decree to be assigned to which party. In execution, actual delivery of possession as per final decree is effected. Unless all three stages till the delivery of possession are complete, partition of the suit property is not complete. It appears that the Trial Court is under the impression that passing of preliminary decree is itself a partition.

6. Moreover, the parameters for adjudication of the application under Order 12 Rule 6 are well settled. The scope of such application is to adjudicate as to whether the admission by the defendants is unequivocal, unambiguous and clear. Once such satisfaction is recorded by the Court, the Court needs to pass partial decree in favour of the plaintiffs.

7. Such exercise of power under Order 12 Rule 6 is not exercise of powers of interim relief. The life of interim order is till the final decision of the suit. However, the life of order passed under Order 12 Rule 6 is permanent. Therefore, rejection of such application on the ground that such relief cannot be granted by interim order is nothing but misconstruction of Order 12 Rule 6 of the Civil Procedure Code, 1908.

8. If at all the plaintiffs are likely to be prejudiced by passing of decree in their own favour, only option available with the plaintiffs is to delete said prayer. However, if such prayer stands and the defendants requested for grant of such relief, the plaintiffs have no locus to object such prayer as it is the plaintiffs' prayer and relief

prayed by them in the suit.

9. Therefore, in my opinion, the Trial Court was not justified in rejecting defendants' application to pass decree in terms of prayer clause 1(b).

10. Hence following order:

a) The impugned order dated 7th October 2021 passed by 9th Civil Judge, Senior Division, Nashik below Exhibit-58 in Special Civil Suit No.364 of 2021, is quashed and set aside.

b) There shall be preliminary decree in terms of prayer clause 20(आ) of the plaint.

11. Interestingly, the plaintiffs are seeking stay to grant of relief in their favour in the plaint. Considering the nature of consequences, no case for continuation of relief in their own favour can be granted. Therefore, oral application is rejected.

12. The civil writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)