

24 January, 2023.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 15225 OF 2022**

Prakash Waman Patil

....Petitioner

V/s.

Damodar Waman Patil, since

decd. Thr. Lrs and Ors.

....Respondents

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Mr. Drupad S. Patil, Advocate for the petitioner.

Mr. B.G. Tangsali, Advocate for respondents no.1A to 1D.

**CORAM : SANDEEP V. MARNE, J.**

**TUESDAY, 24 JANUARY, 2023.**

**P.C. :**

1. The only grouse of the petitioner is that, in the proceedings filed for execution of the decree dated 30 September, 1997, the petitioner has filed an objection on 21 June, 2016. Without deciding that objection, the executing Court has passed order dated 25 August, 2022 directing issuance of letter to the Collector for effecting partition of the property in pursuance of the decree dated 30 September, 1997.

24 January, 2023.

2. Since the petitioner has already filed an objection to execution of the decree, the said objection ought to have been decided by the Executing Court before proceeding to direct partition of the property through Collector.

3. Learned Counsel appearing for the respondents, does not dispute this position but submits that respondents be permitted to file affidavit-in-reply and all contentions of the parties on merits, be kept open.

4. The Writ Petition is accordingly allowed. The order dated 25 August, 2022 passed by the Executing Court is set aside. The Executing Court shall proceed to decide petitioner's application dated 21 June, 2016 by granting an opportunity for filing affidavit-in-reply by the respondent herein.

5. All contentions of the parties on merits of the matter are kept open.

**(SANDEEP V. MARNE, J.)**

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