



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 3067 of 2020

Prakash Bajirao Deshmukh and others

Versus

Namdeorao Anandrao Deshmukh and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.N.Patre, Advocate for the petitioners.

Shri R.D.Wakode, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 13th SEPTEMBER, 2023.

Heard.

2. The application filed by the petitioners for dropping of execution proceeding as the decree of partitioned has already been executed, came to be rejected vide impugned order dated 18th December, 2019 passed by the 2nd Joint Civil Judge, Junior Division, Umerkhed in Regular Darkast No. 37 of 2007, the same is under challenge in this writ petition.

3. Shri Wakode, learned counsel for the respondents has pointed out that after passing of preliminary decree for partition, the decree cannot be made effective without there being a final decree and

the final decree has to specify the division by metes and bounds and it needs to be engrossed on the requisite stamped papers. He, therefore, submits that mutation entry was carried or the possession handed over in view of the preliminary decree is not sufficient. He has placed on record the judgment of the Co-ordinate Bench of this Court in the case of *Annasaheb Rajaram Nagane and another Vs. Rajaram Maruti Nagane and others*¹.

4. This Court in a judgment of *Annasaheb Rajaram Nagane and another Vs. Rajaram Maruti Nagane and others* (supra) has held thus:

“17. The scheme of the Code makes it clear that after passing of preliminary decree for partition, the decree cannot be made effective without there being a final decree. Until rights in the final decree proceedings are worked out, qua all, and, till a final decree in that behalf is made there is no formal expression of the adjudication, conclusively determining the rights of the parties with regard to the properties for partition in terms of decree, so as to entitle the party to make an application for execution of final decree. The final decree has to specify the division by metes and bounds and it needs to be engrossed on the requisite stamped paper(s). Until final decree determining rights of the parties by metes and bound is drawn up and engrossed on stamp paper(s) supplied by the parties, there is no executable final decree in the eye of law. Therefore, the executing Court cannot receive the preliminary decree unless final decree is passed as

1 2001(3) Mh.L.J 53

envisaged under Order 20, Rule 18 of Civil Procedure Code. After final decree is passed and direction is issued to pay stamp paper(s), it becomes executable or becomes an instrument duly stamped. Thus, the condition precedent is to draw up a final decree and then to engross it on stamp paper(s) of requisite value. These two acts put together constitute final decree crystallising the rights of the parties in terms of preliminary decree. Till such time, there is no executable final decree as envisaged under Order 20, Rule 18 of Civil Procedure Code.

5. In view of the above referred well settled law, I do not find any error committed by the learned Executing Court in rejecting the application preferred by the petitioners. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]