

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

WRIT PETITION NO. 4654 OF 2017

Keshav Kisan Dhandre (died) Venudas Kisan Dhandre (died) thr L.Rs. Sunanda
Venudas Dhandre and ors__ Vs. __ Sau. Muktabai Bhaktadas Rohankar and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.M.Tahiliyani, Advocate for petitioners
Mr. V.N.Morande, Advocate for Respondent Nos. 1 to 6
Ms. H.Jaipurkar, AGP for Respondent No. 6A

CORAM : AVINASH G. GHAROTE, J.
DATE : 14/02/2023

1] On 24.1.2023, I had passed the following order.

This petition challenges the order below Exh.31, dated 17.4.17, where the application has been allowed by the Executing Court. The decree holder by the application Exh.31 sought correction in the precept, as the original precept mentioned old survey number as well as the new one. That was the limited extent for which exh.31 was filed, which has been allowed by order dated 17.04.17. Mr. Tahiliyani, learned counsel for the petitioners, takes exception to this order on the ground that the Executing Court could not have corrected the precept, as that jurisdiction would fall with the Court which passed the preliminary decree of partition, and not to the Executing Court.

2. List the matter on 31.01.2023 for further consideration.

2] Mr. Morande, learned counsel for respondent nos.1 to 6 submits that since the Court has been constituted at Dhanora, it will have to be construed as the Court which passed the decree. He does not

dispute the proposition that an application for correction of the preliminary decree regarding the description of the suit property can be made to the Court which passed the decree and not to the Court which was executing it, considering which the impugned order is hereby quashed and set aside, with liberty to the respondent nos. 1 to 6 to file an appropriate application before the learned Civil Judge, Junior Division, Dhanora, for correction of the description of the property, which is to be done in the preliminary decree passed in RCS No.56/99, which is shall be considered and decided by the learned Civil Judge, Junior Division, Dhanora, within a period of 30 days from its filing.

3] Mr. Tahiliyani, learned counsel for the petitioners undertakes to appear in the said Court upon an intimation being given as to the filing of the application without requirement of issuance of any notice by the Court, upon an intimation by the counsel for respondent Nos. 1 to 6.

4] It is made clear that all objections are kept open. The petition is accordingly disposed of in above terms. No costs.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:15.02.2023 17:35