



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

916 WRIT PETITION NO. 2461 OF 2016

**PADMAKAR BHAGWAN MANE & ANOTHER
VERSUS
SHIVGANGA KISHAN MANE & OTHERS**

...
Advocate for the petitioners : Mr.V.V.Bhavthankar
Advocate for Respondent nos.4 : Mr.Anand Bhandari

...
CORAM : ARUN R. PEDNEKER, J.
DATE : 07.08.2024

P.C. :

1] By the present Writ Petition, the petitioners are challenging the judgment and order dated 22.09.2017 below Exh.117 in Special Darkhast No.94 of 2004 passed by Civil Judge Senior Division, Latur.

Brief facts leading to filing the present writ petition are summarized as under :

2] In execution of the decree for maintenance, the property jointly owned by the petitioner no.1 and the petitioner no.2 along with their sister is sold. The petitioners and their sister jointly owned 1 Hectore 88 R. out

of Gat No.114 situated at village Nandgaon, District Latur. While executing the decree for maintenance, the share of the judgment debtor / petitioner no.1 to the extent of 62 R. of land is sold. Sister of petitioners has filed a partition suit for the above mentioned property. The petitioner no.2, who is the brother of the petitioner no.1, objected to handing over the possession of the land to the extent of 62 R. to the purchaser as he has also share in the above mentioned property. However, the Executing Court has granted auction sale of 62 R. of land in execution of the decree.

3] Needless to mention that the petitioner no.2 and others would be entitled to remaining share in the said property and the share, which is sold to the respondents in execution proceedings, will be apportioned to the share of the judgment debtor - petitioner no.1. However, it is disputed that the petitioner no.1 would be entitled to 62 R. of land out of Gat No.114.

4] In the event, the petitioner no.1 receives land less than 62 R. towards his share, the concerned plaintiffs in

the suit filed for partition would be entitled to take steps to the extent of protection of their rights over the suit property in the suit for partition and for recovery of the possession in accordance with law.

5] In view of the same, the rejection of the application at Exh. 117 in Special Darkhast No. 94 of 2004 by the Executing Court, is not interfered with.

6] Writ Petition is dismissed accordingly.

[ARUN R. PEDNEKER]
JUDGE

DDC