



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

WRIT PETITION NO. 961 OF 2024

Kiran s/o. Dyaneshwar Hake
Age 32 years, Occu. Agri.,
R/o. Mangarul, Taluka Loha,
District Nanded

.. Petitioner
(Original Applicant)

Versus

1. Vishwanath s/o. Tukaram Devkate
Age 42 years, Occu. Agri.,
R/o. Koshtawadi, Taluka Kandhar,
District Nanded

2. The Tahasildar,
Palam, Taluka Palam,
District Parbhani

.. Respondents
(Original Non-applicants)

Mr. Harshad H. Padalkar, Advocate for the Petitioner;
Mr. Yogesh P. Deshmukh, Advocate for Respondent No.1;
Mr. P. D. Patil, A.G.P. for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 26-03-2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of the learned counsel for the respective parties, heard finally.

2. The petitioner is a purchaser of the land after the judgment and decree of the partition. The petitioner is a son-in-law of his vendor who was the party to the suit and execution proceeding. After the decree was passed, a precept under Section 54 of the Code of Civil Procedure (for short, "C.P.C.") was sent to the

Tahsildar. The vendor of the petitioner did not appear before the Tahsildar during the partition. Respondent No.2/The Tahsildar, Palam proceeded ahead and got partition map prepared. He is going to determine the shares of each shareholder in the suit lands. After the measurement map was called, the applicant filed an application before the Tahasildar, contending that the measurement done for the partition by the Deputy Superintendent of the Land Records is incorrect and in violation of the four boundaries considered while decreeing the suit. He has specifically contended that the share granted to the decree-holders have shares in Survey No.94/1 and 94/3 excepting his share. Therefore, the Tahsildar should again re-measure the land. If it is not done, it may be a contempt of the Court. If it is not done, the applicant would suffer the loss.

3. Before the impugned order was passed, the Tahsildar had passed order on 08.12.2023. He observed that the petitioner had produced the order of the learned District Judge-1 passed in Miscellaneous Civil Application No.44 of 2022 which was an application for condonation of delay impugning the order of Executing Court passed under Order XXI, Rule 97 of the C.P.C. On his request, Tahsildar postponed the execution of partition till 04.01.2024 imposing condition on the petitioner to produce the stay orders to the execution proceeding. Thereafter, in impugned order dated 05.01.2024, he observed that no stay order has been

produced. Therefore, he proceeded to effect the partition.

4. The arguments of learned counsel for the petitioner reveals that his application dated 07.11.023 has been rejected, though specific order has not been passed.

5. Learned counsel for the respondent No.1 submits that the applicant is the son-in-law of his vendor. He did not appear in the Court. The submission of the petitioner before the Tahsildar was that whatsoever the share he has purchased as per the sale deed dated 16/17.06.2020 should not be disturbed and it should fall exclusively to his share. He has rightly pointed out that any property purchased during the pendency of suit after the decree and before the execution, is subject to Section 44 of the Transfer of Property Act. The co-owner has no right to earmark area unless partition is effected by metes and bounds by the due procedure of law.

6. Learned counsel for the respondent No.1 submits that whatever share that goes to share of vendor should go to the petitioner. He does not have objection. He also states that the petitioner has no objection about the area of the land that falls to share of his vendor. His vendor has share in two fields i.e. Gat No.94/1 and 94/3. He submits that his share may go to his share. At the most, he may be entitled to record his name in 7/12 extract after partition, subject to the objections of his vendor.

7. Learned counsel for the petitioner has made a statement that the application of petitioner dated 07.11.2023 has not been happily worded. The petitioner is interested to get the share in the suit lands which his vendor is entitled. He wanted to protect his interest and in future his name should be there on record. Therefore, he wanted to be on record only for the purpose of protecting his interest.

8. Learned counsel for respondent No.1 also states that respondent No.1 has no objection if the share of his vendor goes to him. However, for that purpose, Tahsildar should not re-measure the lands again. The decree is pretty old and silent in execution. Learned counsel for both parties by consent submitted that since the mother died, her share would be divided amongst her legal heirs equally. So, the share of vendor of petitioner has also been increased from $\frac{1}{4}^{\text{th}}$ to $\frac{1}{3}^{\text{rd}}$ and that $\frac{1}{3}^{\text{rd}}$ share should be divided in five legal heirs of deceased Devrao. He wanted to state that there is no need to make an amendment in the shares as per Rule 7 of the Maharashtra Land Revenue (Partition of Holdings) Rules, 1967, because those facts have been already brought to the notice of the Tahsildar and it is not disputed.

9. It is an admitted position that the application of the petitioner under Order XXI, Rule 97 of the C.P.C. has been rejected by the Executing Court and its appeal is pending. The petitioner

has only insecurity about his share which his vendor is to get from the entire fields. He wanted to protect his interest to the extent which he has purchased from his vendor. The Tahsildar could do it. However, the fact remains that the vendor of the petitioner who is his father in law is not coming forward. He never objected for the measurement and the partition map. So whatever the acts done by the Tahsildar would be binding on the petitioner. He could not ask the Tahsildar to reverse the clock back. However, he may be a formal party to the proceeding before Tahsildar for protecting his right only peacefully without disturbing the final execution of the decree.

10. In view of the matter, the petition stands disposed of on the terms that the applicant should be allowed to participate in the partition proceeding from the stage at which it is now fixed before the Tahsildar without disturbing earlier measurement and the change in the shares after the death of mother, petitioner's vendor and respondent No.1.

11. The petitioner would be entitled to record his name, instead of his vendor in 7/12 extract and also would be entitled to possession to the extent of the share which is entitled to get as per decree, subject to objection of his vendor, if any.

12. Rule made absolute in above terms.

13. Learned A.G.P. is requested to inform respondent No.2/the Tahsildar that the partition proceeding listed tomorrow i.e. on 27.03.2024 should be proceeded ahead and petitioner be allowed to participate in that proceeding.

(S. G. MEHARE)
JUDGE

rrd