



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

WRIT PETITION NO. 5514 OF 2024

JALINDAR LIMBAJI JAMALE

VERSUS

**BHAGWAN PARASRAM KATE DIED THR LRS LATA
BHAGWAN KATE AND OTHERS**

...

Mr. Ramesh Vitthal Naiknavare, Advocate for the Petitioner.

Mr. S. N. Kendre, AGP for Respondents-State.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 27th JUNE, 2024.

P.C.:-

1. The decree passed in R.C.S. Nos.85/1991 and 210/1991 is subject matter of execution. The precept under Section 54 of the Code of Civil Procedure has been sent to the Revenue Authorities. The petitioner claims independent right over lands, which are subject matter of execution. Therefore, he filed objection before the Civil Court, Senior Division in Civil M.A. No.831/2021. The said objection is pending adjudication.

2. In pursuance of the precept under Section 54 of the Code of Civil Procedure, the measurement is effected. The petitioner raised his objection to such measurement before the Revenue Authorities. The learned Tahsildar taking cognizance of such objection and even attributing certain defaults in prosecution of execution proceedings, closed the file in exercise of powers conferred under Section 232(1) of the Maharashtra Land Revenue Code. The respondents-decree holders unsuccessfully assailed Tahsildar's order in Appeal before the Sub Divisional Officer. Thereafter, respondent nos.7 and 11 filed Second Appeal under Section 247 of the Maharashtra Land Revenue Code before the

Additional Collector, Osmanabad, that came to be allowed vide impugned order dated 03.04.2024.

3. Mr. Naiknavare, learned Advocate appearing for the petitioner submits that the Appeal filed by the respondents has been allowed without granting sufficient opportunity of hearing to the petitioner.

4. Having considered submissions advanced, it is apparent that partition decree passed by the Civil Court is subject matter of execution. Accordingly, precept has been sent under Section 54 of the Code of Civil Procedure. During such execution, the petitioner seeks to obstruct execution claiming his independent right in respect of the said property. He has rightly approached Civil Court by filing objection to execution of decree, which is pending adjudication. In that view of the matter, the petitioner cannot object proceeding carried by the Revenue Authorities in pursuance of precept under Section 54 of the Code of Civil Procedure. He will have to establish his right before Civil Court. The decision of Civil Court govern rights of respective parties. No fault or jurisdictional error can be found in the impugned order.

5. In that view of the matter, there is no merit in the Writ Petition. Writ Petition stands dismissed. However, dismissal shall not prejudice petitioner's right to prosecute his remedies before Civil Court.

(S. G. CHAPALGAONKAR)
JUDGE