

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.20 OF 2022

WITH
WRIT PETITION NO.19 OF 2022

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Sakharam Atmaram Gaikwad
(Since Deceased)

Through Its Legal Heirs & Ors

... Petitioners

V/s.

The State of Maharashtra & Ors

... Respondents

Mr. Dnyaneshwar W. Bhosale, for Petitioners.

Mr. S. D. Rayrikar, AGP, for State/Respondent Nos.1 to 5.

Mr. Sharad T. Bhosale, for Respondent No.6A.

Ms. Pradip Railkar i/by Mr. Ajay Joshi, for Respondent No.18.

Ms. Pradip Raikar i/by Ajay A. Joshi, for Respondent No.18.

Mr. Ajay A. Joshi, for Respondent No.18.

Ms. Pranali, P Parulkar, for Respondent Nos.12 to 16.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 7, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- Considering the limited controversy involved in the writ petitions, the writ petitions are taken up final hearing at admission

stage. The Civil Court passed a decree in the suit for partition. The decree declared that the plaintiff shall have 1/9 share and defendant Nos.1 and 2 shall have 4/9 share.

3. Moreover, it is declared that the sale deed executed by defendant No.1 in favour of defendant Nos.8 to 13 was not binding on the share of the plaintiff and defendant Nos.1 and 2. It also directed that the precept to be sent to the Tahsildar.

4. In pursuance of the said order, the Tahsildar by order dated 31 August 2013 prepared partition chart allotting $\frac{1}{2}$ share to the plaintiff and balance $\frac{1}{2}$ share in favour of defendant No.1. Therefore, such partition chart was against the decree. Hence, such exercise of power by the Tahsildar is not permissible. Therefore, the order impugned in the writ petition cannot be sustained.

5. Rule is made absolute in terms of prayer clause (a).

6. However, it is made clear that the Tahsildar shall carryout partition proceeding as per the decree dated 26 February 2009. Since, the decree is of 2009, the Tahsildar shall complete partition proceeding within six months from today.

7. Both the writ petitions stand disposed of. No costs.

(AMIT BORKAR, J.)