

*Shabnoor*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.8585 OF 2022**

Raosaheb Tatoba Roje & Ors.

... Petitioners

**V/s.**

Akkashani Jaypal Chougule & Ors.

... Respondents

Mr. Vaibhav Ramchandra Gaikwad for petitioners.

Mr. Raturaj Pawar for respondent No.1.

Mr. Padmanabh D. Pise a/w Ms. Sejal A. Hariyan i/by P.  
Padmanabh for respondent Nos.2 and 3.

**CORAM : AMIT BORKAR, J.**

**DATED : SEPTEMBER 6, 2024**

**P.C.:**

1. This writ petition challenges the order passed by the Appellate Court in an appeal contesting a decree issued in final decree proceedings, which was initiated to finalize the partition of house properties.

2. It is undisputed that the preliminary decree dated 24th August 2018 pertained to both house properties and agricultural lands. In issuing the preliminary decree, the Trial Court invoked Section 54 of the Code of Civil Procedure, 1908 (CPC) by sending a precept to the Revenue Authority for partitioning the agricultural land. However, the Court appointed a Commissioner to suggest a partition scheme for the house property.

3. In pursuance of clause (4) of the preliminary decree, the respondents filed an application for passing a final decree to identify the shares to be allotted to them. The Trial Court passed a final decree, outlining the partition of the house property between both parties. This final decree was then appealed before the Appellate Court. In the appeal, the petitioner filed an application under Order 41, Rule 27 of the CPC, seeking permission to produce additional evidence related to the agricultural properties. The Appellate Court allowed this application. Based on this order, the petitioner then filed another application under Order 41, Rule 28 of the CPC, which was subsequently rejected by the Appellate Court. Consequently, this order has been challenged in the present writ petition.

4. The petitioner contends that once an application under Order 41, Rule 27 is granted, the Court is obligated to allow the application under Order 41, Rule 28 of the CPC. In support of this argument, reliance is placed on the decision in *H. P. Vedavyasachar vs. Shivshankara and Another*, 2010(1) Mh.L.J. 877, wherein the Supreme Court held that when an application under Order 41, Rule 27 is allowed, the Appellate Court has two options: it may either record the evidence itself or direct the Trial Court to do so.

5. There is no dispute regarding the principle laid down by the Apex Court. However, in *Sangram Singh vs. Election Tribunal* : AIR 1955 SC 425, the Supreme Court observed that code of procedure must be viewed as a means to facilitate justice and further its ends, not as a penal enactment designed to punish. Too rigid an

interpretation of procedural rules, leaving no scope for flexibility, should be avoided (provided justice is served to both sides) so that the very system meant to deliver justice does not become a tool for its obstruction. Further, the principle of natural justice, which underpins our procedural laws, ensures that no individual is condemned unheard, no decision is reached behind someone's back, and proceedings affecting one's life or property do not continue in their absence. Exceptions, where clearly defined, must be observed, but as a rule, procedural laws should be interpreted in light of this principle wherever feasible.

6. In the present case, the final decree proceedings pertain to the partition of house property. It is well established that a Civil Court lacks jurisdiction to entertain proceedings for passing a final decree concerning agricultural land, as such matters fall within the purview of the Revenue Authority under the Maharashtra Land Revenue Code, 1972. Therefore, the evidence the petitioner seeks to introduce relates to an issue irrelevant to the current proceedings. Thus, even though the application under Order 41, Rule 27 of the CPC was allowed, it does not result in injustice to the petitioner, as the evidence concerns agricultural properties, which are not part of the final decree proceedings. Furthermore, allowing the application would delay the enforcement of the decree in favor of the decree-holder. It is also a settled principle that the High Court, under Article 227 of the Constitution of India, should not interfere with an order merely because it is illegal. In the present case, allowing the application would cause undue delay to the decree-holder seeking to execute the decree. Hence, I

am of the opinion that the impugned order ensures substantial justice.

7. Accordingly, the writ petition is disposed of, with no order as to costs.

8. Considering the facts of the case, the Appellate Court is directed to decide the appeal within three months from today.

**(AMIT BORKAR, J.)**