

Ajay

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

WRIT PETITION NO. 8141 OF 2024

Anandibai Nivrutti Kinhale and Ors.

.. Petitioners

Versus

Anjanabai Kinhale alias Jagtap and Anr.

.. Respondents

-
- Mr. Ashutosh M. Kulkarni, Advocate i/by Mr. Sarthak Diwan for the Petitioners.
 - Mr. Nitin Gaware Patil a/w. Mr. Divyesh Jain, Advocates for Respondents.
-

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 11, 2024.

P.C.:

1. Heard Mr. Kulkarni, learned Advocate for the Petitioners and Mr. Gaware Patil, learned Advocate for Respondents.

2. Writ Petitioners are the Judgment Debtors in the present Writ Petition. It is seen that decree has been passed allowing the partition Suit and parties are presently before the Executing Court. The decree is in respect to entitlement of the Plaintiff who is 93 years old to the extent of 1/3rd share out of the Suit property. There are 4 land parcels comprising the Suit property as stated in the plaint. Panchnama was carried out in the year 2007 in respect of the said 4 land parcels by the Competent Authority in Execution proceedings. Precepts have already been sent.

3. Mr. Kulkarni for the Judgment Debtors would submit that Plaintiffs are entitled to 1/3rd share and nothing more. He would submit that on the basis of precepts a “वाटप तक्ता” is prepared which is appended at page No.25 of the Writ Petition. This apportionment chart is ambiguous as it gives excess property and share to the decree holders. According to Mr. Kulkarni, by virtue of the “वाटप तक्ता”, *prima facie*, it would be seen that Plaintiff would be now getting possession of more than 1/3rd share out of 4 land parcels to which she is entitled to. Mr. Kulkarni would submit is that since the decree has been upheld by the Appellate Court and has become absolute, Plaintiff would be entitled to only 1/3rd share of the Suit properties as described in the Suit plaint and nothing more.

4. Mr. Gaware Patil, learned Advocate appears for the Plaintiff who is the Respondent before me. In his usual fairness, he informs the Court that Plaintiff is entitled to 1/3rd share out of Suit land parcels as per the decree. If that be so, there is no discrepancy at all and if the Executing Court or the Competent Authority gives to the Plaintiff more area than the 1/3rd share out of the Suit property as per the decree, then that would be unfair and incorrect.

5. On perusing the “वाटप तक्ता”, this Court is not in a position to make out what would be the 1/3rd share out of the 4 land parcels of

the Suit property as none of the Advocates before me are able to decipher the “वाटप तक्ता”. Be that as it may, it is left to the absolute discretion of the concerned Executing Court and/or Competent Authority to ensure that when possession is handed over to the Plaintiffs as per the decree, possession will be handed over only of the 1/3rd area which shall be carved out of the 4 land parcels which are the subject matter of the Suit proceedings and decree passed by the Court. In terms of the area, precise computation of 1/3rd area shall be computed and shall be handed over to the Plaintiffs alongwith a map which shall be prepared by the concerned Executing Court and/or Competent Authority. If required, assistance of the TILR/DILR to prepare the map shall be taken by the Executing Court.

6. All other grievances of the parties, over and above this shall be raised before the appropriate forum in accordance with law.

7. No further orders are required to be passed in the present Writ Petition.

8. It is clarified that this Court has also not expressed or opined on the correctness or incorrectness of the “वाटप तक्ता” which is appended at page No.25, which is the bone of contention raised by the Writ Petitioners.

9. The Competent Authority, if so desired, may take a little extra time for determining a fresh “वाटप तक्ता” alongwith map strictly in

accordance with law of the 1/3rd area out of the 4 land parcels in the decree and ensure that none of the parties are given or receive either more or less than what they are entitled to while apportioning the Suit properties.

10. If the above exercise is to be carried out for preparation of the fresh “वाटप तक्ता”, the said exercise shall be undertaken within a period of eight weeks from today positively and parties shall cooperate. If the parties do not cooperate, the concerned Executing Court and/or Competent Authority shall not protract the matter further and shall determine the precise 1/3rd area as per the decree for the 4 land parcels strictly in accordance with the decree and complete the exercise to put the respective parties in possession thereof.

11. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2024.06.12
10:51:53 +0530