



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 5400 of 2021

Fahimmudin Inamdar S/o Gulam Mohiuddin and others

Versus

Sharifabano Mohd. Arif and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.A.Lohia, Advocate h/f Shri D.R.Khapre,
Advocate for the petitioner.

Shri Zeeshan Z. Haq, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 29th APRIL, 2024.

Heard.

2. Order Below Exhibits 37 and 96 dated 17th November, 2021 passed by the learned Civil Judge, Senior Division, Akot in Special Darkhast No. 53 of 2018, are under challenge in this writ petition.

3. Vide Order Below Exhibit 37, learned Executing Court rejected the objection raised by the petitioner under Section 47 and under Order XXI Rule 98 and 101 of the Code of Civil Procedure. The main objection to the execution of decree is that the area of the property under execution is less than standard area

as prescribed under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. While rejecting the application, learned Executing Court has observed that objection is premature and it can be considered after receiving the report of Commissioner, if appointed for the partition.

4. It is further observed as regards right or in respect of compromise made by the widow of Mohd. Sadique and Raziya Parvin and Rukhsana Parvin and observed that it can be considered at the time of allotment of share to the decree-holder in view of the compromise. In the circumstances, I do not find any error in the impugned order Below Exhibit 37. Accordingly, the challenge raised to the order Below Exhibit 37 is rejected.

5. As far as the order Below Exhibit 96 is concerned, the respondent nos. 1 to 8(E) and 8(F) have filed an affidavit on record to the following effect.

4. It is submitted that the shares determined by order passed under Exhibit 46 are proper as per law and it is needless to say that the consequences of the said order would follow. The present respondents are concerned with the shares of Mohammad Arif Mohammad Haroon and Mumtaz Begum Sayyed Darood. Hence, there is no substance in the apprehension expressed by the petitioners.”

6. It is the case of the respondent nos.1 to 8(E) and 8(F) that they have a joint share of 22.5% in the

suit property in view of the compromise recorded below Exhibit 46. Though, the learned Executing Court has held that in view of the compromise below Exhibit 46 the share of Raziya Parvin and Rukhsana Parvin in favour of the judgment debtor can be excluded, however, the clause 3 of the impugned order says that the decree-holder is entitled for half share in the partition of the suit Bangalow. Whereas, the share of Raziya Parvin and Rukhsana Parvin ought to have excluded from the share of the judgment debtor.

7. In the circumstances, I am of the opinion that the matter needs to be remanded back to the learned Executing Court to decide the application Exhibit 96 afresh after taking into consideration the compromise and the affidavit filed by the respondent nos. 1 to 8(E) and 8(F). Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The order below Exhibit 96 passed by the Civil Judge, Senior Division, Akot in Special Darkhast No. 53 of 2018 is hereby quashed and set aside and the matter is remanded back to the trial Court to decide the application Exhibit 96 afresh in view of the compromise recorded at Below Exhibit 46 and affidavit filed by the respondent nos.1 to 8(E) and 8(F);

iii. The learned executing Court shall decide the application afresh within two months from the next fixed date after hearing both the parties.

[ANIL S. KILOR, J.]