



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

SECOND APPEAL NO. 11 OF 2024

Laxman Bhikaji Ubarhande

Vs.

Tanabai Bhaskar Ubarhande & Ors.

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. P.B. Patil, Advocate for the Appellant.

CORAM : G. A. SANAP, J.

DATED : 17th JANUARY, 2024.

Heard the learned advocate for the
 appellant/original defendant No.1.

2. The decree for partition passed in favour of respondent Nos.1 and 2 defining their share in some of the properties was confirmed by the Appellate Court. It has been concurrently held by the Courts below that the respondents are entitled to get share in the property as defined in the judgment and decree.

3. Learned advocate submitted that the land Block No.21 is admeasuring 0.05 HR. and Block No.280 is admeasuring 0.65 HR. It is submitted that these lands are not partible in view of the provisions of Section 8 and 8AA of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Learned advocate submitted that at the time of execution of the decree, the Collector may face this problem and, therefore, the question needs to be decided.

4. In my view, this question could not be said to be a substantial question of law for the purpose of deciding this appeal. A preliminary decree has been passed. The said preliminary decree has to be executed by the Collector in terms of Section 54 of the Code of Civil Procedure, 1908. On receipt of the record of the Collector, the Court would be required to pass a final decree. It appears that the appellant is foreseeing this difficulty/hurdle while executing the decree.

5. It is pertinent to note that the shares of the parties have been defined by the preliminary decree. On the ground put-forth, the judgment and decree cannot be set aside or modified.

6. In the facts and circumstances, on receipt of the report of the Collector, the Executing Court would be required to pass an appropriate order and pass a final decree. Accordingly, I do not see any substance in this appeal. The appeal is, accordingly, **dismissed**.

(G. A. SANAP, J.)

Vijay