



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 3483 OF 2024

Shantilal Alichand Sanklecha

VERSUS

Anita W/o Kartarsingh Chawla Deceased

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Advocate for the Petitioner : Mr. Natu Sharad V.

Advocate for Respondent Nos.2 & 3 : Mr. A.M. Gholap

Advocate for Respondent No.5 : Mr. B.R. Warma

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CORAM : ROHIT W. JOSHI, J.

DATE : 22nd AUGUST, 2025

P.C.:

1. Present petition arises out of execution proceeding being Regular Darkhast No.164 of 2011. The said execution petition is filed for execution of judgment and decree dated 28.04.2022 passed by the learned Adhoc District Judge-1, Ahmednagar in Regular Civil Appeal No.385 of 2015. A second appeal challenging the said decree being Second Appeal (Stamp) No.29673 of 2022 is pending before this Court. The learned advocate for respondent nos.2 and 3 had moved a motion before the Hon'ble Administrative Judge for clubbing of the present petition with said second appeal. However, the motion came to be rejected and accordingly the present petition has come up for hearing before this Court.

2. The name of respondent no.4 – Lavsagar is ordered to be deleted vide order dated 16.08.2024. Respondent no.1 is his mother who is predeceased to him, respondent nos.2 and 3 are his brothers and

respondent no.5 is his sister. Deceased respondent no.4 – Lavsagar was unmarried and does not have any legal heir in Class-I. He is throughout represented by respondent nos.2, 3 and 5, who are his brothers and sister.

3. Present petitioner had filed suit for specific performance of contract against respondent nos.1 to 4 claiming that respondent nos.1 to 4 had entered into an agreement to sale with him on 25.01.2006. The said suit was registered as Special Civil Suit NO.109 of 2010. The said suit was decreed vide judgment and decree dated 29.08.2011 passed by the learned Civil Judge, Senior Division, Ahmednagar thereby directing respondent nos.1 to 4, who were defendants in the said suit to execute registered sale deed with respect to suit property accepting balance sale consideration amount of Rs.15,00,000/-. Respondent nos.1 to 4, original defendants preferred an appeal challenging the said decree for specific performance of contract being Regular Civil Appeal No.385 of 2015. Pending the said appeal, respondent no.1/Anita expired. She was survived by respondent nos.2 to 4 (sons) and respondent no.5 (daughter) as her legal heirs. On her demise, name of respondent no.5 was brought on record as legal representative as other three were already on record.

4. After the decree for specific performance of contract was passed in Special Civil Suit No.109 of 2010 on 29.08.2011, the respondent

no.5/Kanchan filed a suit for partition and separate possession with respect to suit property being Special Civil Suit No.82 of 2014. Her mother (Anita) and brothers (Manoj, Indrajit and Lavsagar), who are respondent nos.1 to 4 were arrayed as defendants in the said suit. Mother (Anita) expired while the said suit was pending. The said suit came to be decreed by the learned 7th Joint Civil Judge, Senior Division, Ahmednagar vide judgment and decree dated 21.06.2018. The learned Court has awarded 1/4th share each to respondent nos.2 to 5 i.e. plaintiff and defendant nos.2 to 4 in the said suit. Since defendant no.1 mother had expired, it was observed that her share will devolve equally upon plaintiff and defendant nos.2 to 4 in the said suit. The relevant observations of the learned Court in para 9 of the judgment are reproduced for ready reference as under :

“9. As per finding of issue No. 1 the suit property is proved to be joint family property. Therefore, the plaintiff being daughter of Kartarsing, is a class-I heir and can very well claim partition in it. I have no hesitation to hold that she is entitled to claim partition and get her share divided. As said above, relationship between the parties is an admitted fact. Kartarsing was survived by his wife, three sons and daughter (the plaintiff). As per schedule-I of the Hindu Succession Act, widow, son and daughter all are class-I heirs. Therefore, the plaintiff and defendant Nos. 1 to 4 will get equal share in the suit property. Defendant No.1 died during pendency of the suit. She is also survived by the plaintiff and defendant Nos. 2 to 4. Consequently the plaintiff will get 1/4th share in the suit property. Likewise defendant Nos. 2 to 4 will get

1/4th share each in the suit property.”

5. The learned Court has observed that Kartarsing was survived by his wife, three sons and daughter (the plaintiff), all of whom were entitled to equal share in the suit property being his Class-I legal heirs. In sum and substance, the finding is that the widow and her children will inherit equal share in the suit property. Although it is so mentioned, it is pertinent that all five legal heirs had 1/5th share in the suit property granted by the learned Court. The learned Court has thereafter observed that since mother has also expired pending the suit, her share will also devolve upon three sons and daughter. Since the mother is excluded on her demise, it is held that three sons and daughter will have 1/4th share each in the suit property. Accordingly, the decree for partition and separate possession is passed granting 1/4th share each to respondent nos.2 to 5 i.e. defendant nos.2 to 4 and plaintiff in the said suit.

6. Coming back to the appeal preferred by the respondents challenging the decree for specific performance of contract, by the time the appeal came up for hearing, the suit for partition and separate possession was already decreed. The said judgment and decree was brought to the notice of the learned Appellate Court. The Appellate Court considering the said subsequent development found that it would be necessary to modify the decree since respondent no.5, who is the

plaintiff in the suit for partition was not a party to agreement to sale. The learned Appellate Court has observed that the agreement for sale was binding on defendants and accordingly, the defendants will be liable to execute sale deed with respect to their share in the suit property. As regards the respondent no.5, who is not party to agreement of sale, it is observed that she being legal representative of defendant no.1 will be liable to execute sale deed as her legal representative. These observations are made in para 22, 29 and 30 of the judgment. Para 2 (i) of the operative order and decree also directs the legal heirs of deceased defendant no.1 (mother) and defendants nos.2 to 4 to execute registered sale deed to the extent of their share.

7. The decree when read in conjunction with observations recorded in para 22, 29 and 30 would mean that defendant nos.2 to 4 i.e. the sons will be liable to execute the sale deed with respect to their 75% share (25% each) in favour of plaintiff/petitioner. As regards respondent no.5, the correct purport of the decree is that she will not have to execute sale deed in execution of the decree in her individual capacity, however, in the capacity of legal heir of her deceased mother, to the extent of share derived by her in the suit property from her deceased mother, she will be bound by the decree. If the mother was alive, share of respondent no.5 (daughter) would be 1/5th i.e. 20%. In view of demise of mother, the share of respondent no.5 has increased to

1/4th share i.e. 25%. This additional 5% is received by respondent no.5 on inheritance from her mother. To this extent of 5% share, respondent no.5 is liable to execute sale deed in favour of plaintiff/petitioner.

8. The plaintiff/petitioner filed a draft of sale deed in the execution proceeding. The respondent no.5, who is judgment debtor no.1A raised objection that since she is not party to the agreement in question and a decree for partition and separate possession is passed in her favour in Special Civil Suit No.82 of 2014, the direction to execute the sale deed in execution of decree for specific performance of contract cannot be issued against her. Dealing with the said objection, the learned Executing Court has observed that the decree passed by the learned Trial Court which was with respect to entire property was modified by the learned Appellate Court in view of decree for partition and separate possession. The learned Executing Court therefore observed that name of judgment debtor no.1A i.e. respondent no.5 cannot be incorporated in the sale deed as a seller. The learned Executing Court directed the petitioner/decreed holder to file correct draft of the sale deed in terms of the modified decree. The petitioner/decreed holder thereafter filed application for review vide Exhibit-81. This application for review came to be rejected vide order dated 21.11.2023 observing that no error apparent on the face of

record was demonstrated and no reasonable ground was made out in order to exercise the power of review.

9. Learned advocate for the petitioner/decreed holder contends that the petitioner/decreed holder is ready to file a correct draft of sale deed. He further contends that in view of the observations in the order dated 05.08.2023 holding that name of respondent no.5/judgment debtor no.1A cannot be incorporated in the sale deed, he is not in a position to file correct draft of sale deed. According to learned advocate, name of respondent no.5 i.e. judgment debtor no.1A is required to be shown as seller in the sale deed with respect to 5% share that she has inherited from her mother/judgment debtor no.1.

10. Per contra, Mr. Warma, learned advocate for respondent no.5 and Mr. Gholap, learned advocate for respondent nos.2 and 3 contend that the order passed by the learned Executing Court is correct. It is their contention that since 1/4th share is granted to respondent no.5/judgment debtor no.1A in the decree for partition, the said portion of suit property cannot be included in the sale deed. They contend that the decree for partition is binding on all the parties. I am afraid, the said contention cannot be accepted in its entirety. This contention can be accepted only with respect to 1/5th or 20% share of respondent no.5/judgment debtor no.1A, which she holds independently of her mother/judgment debtor no.1. The additional

5% share that she has inherited from judgment debtor no.1 is liable to be sold in execution of decree.

11. There cannot be two opinions regarding the same. The learned Appellate Court has also dealt with this aspect and has directed that defendant nos.2 to 4 i.e. legal heirs of defendant no.1 will be responsible to execute the sale deed. It is therefore obvious that name of respondent no.5/judgment debtor no.1A needs to be reflected in the sale deed as vendor and she will be liable to sell 5% of her share in execution of decree in specific performance of contract. Her 20% share will not be liable to be sold in execution of the decree since she is not party to the agreement to sale.

12. The petition is disposed of accordingly. The orders dated 05.08.2023 and 21.11.2023, passed by the learned Civil Judge, Senior Division, Ahmednagar on applications at Exhibits-56 & 81 respectively in Regular Darkhast No.164 of 2021 are quashed and set aside.

13. The petitioner/plaintiff is directed to file corrected sale deed on record before the learned Executing Court with respect to 80% share in the suit property. Name of respondent no.5 will also be reflected as vendor qua 5% share in the suit property.

[ROHIT W. JOSHI J.]