



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
16 WRIT PETITION NO. 5615 OF 2024**

**BALAJI NARAYAN KURNE
VERSUS
BABAN NARAYAN KURNE AND OTHERS**

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Advocate for the Petitioner : Mr. Madde Shrikant B
None for respondent.

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CORAM : SHAILESH P. BRAHME, J.
DATE : 17th FEBRUARY 2025

PER COURT :

1. Heard learned counsel for the petitioner. None appears for the respondent though they are duly served. Respondent nos. 2 to 4 have caused appearance but their advocate is absent. Under peculiar circumstances, I am taking up this matter for final disposal.
2. Petitioner is the decree holder of R.C.S No.26 of 2019 for partition and separate possession. His suit was decreed on 04.10.2021 granting equal shares to him and the respondents who are siblings. Petitioner preferred execution and matter was referred to Collector under Section 54 of C.P.C. The report is awaited and during interregnum, few developments took place.
3. Petitioner and the respondents who are siblings arrived at settlement and they submitted terms of the settlement before executing court on 20.11.2023. It is informed that equitable partition

by metes and bounds was effected and possession was also given to the sharers. On number of occasions petitioner and the respondent nos. 2 to 4 submitted *pursis* before the court reiterating the settlement and separation of share. In this process, respondent no.1 consistently remained absent though he was served. Pertinently, the parties have allotted equitable share to the respondent no.1 also. Despite service, he did not prefer to cause appearance before the executing court. It is informed that even the matter was taken in the lok adalat also and ultimately by impugned order, the executing court refused to accept the compromise.

4. Learned counsel for the petitioner submits that impugned order is perverse. When there is a settlement between the parties and interest of the absent respondent no.1 was also protected, there was no reason to doubt the settlement.

5. The record shows that the respondent no. 1 was served but he did not cause appearance before the executing court. Petitioner and other respondents have taken care of interest of respondent no.1 also. The settlement terms shows that he was being allotted share of 30.6 R at par with petitioner and others. The matter was lingering before the executing court just because it did not receive report from collector. It is perversity to reject the terms of settlement just because respondent no.1 chose to remain absent. Record shows that no prejudice is caused to him. The executing court cannot be made to wait for inordinate period for appearance of respondent no.1, when

petitioner and other respondents have settled the matter and insisting for disposal in view of terms of settlement.

6. The findings recorded by executing court that civil court is *functus officio* when matter is referred to collector under section 54 of C.P.C is unsustainable. The parties have settled disputes amicably. Execution proceedings can be disposed of or there is no further need to keep the proceedings on board. For this administrative work, executing court cannot be said to be *functus officio*. It can be said to be *functus officio* in the limited sense that unless the report is received, the executing court cannot deal with the subject referred under section 54 of C.P.C. I find that there is error of jurisdiction in passing impugned order. I therefore pass following order :

ORDER

- a). Writ petition is allowed in terms of prayer clause (B).
- b). The executing court shall close the proceedings of execution due to settlement at Exhibit-20.
- c). There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

vsj..