

VRJ

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

WRIT PETITION NO.3074 OF 2021

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Subhash Namdev Naiknavare & Ors. ... Petitioners

V/s.

Sindhu Bibhishan Naiknavare & Ors. ... Respondents

Mr. Samir Kumbhakoni with Anjali Shaw and
Chaitanya Joshi for the petitioners.

Mr. Umesh H. Pawar for respondent No.1.

Ms. Priyanka Chavan, AGP for the State-respondent
No.16.

CORAM : AMIT BORKAR, J.

DATED : MARCH 17, 2025

P.C.:

1. The present writ petition emanates from a precept issued under Section 54 of the Code of Civil Procedure, 1908, in furtherance of the decree for partition rendered in Regular Civil Suit No. 689 of 1987. The decree unequivocally determined the respective entitlements of the parties to specified shares in the suit properties. However, during the pendency of the final decree proceedings, certain co-sharers alienated their respective shares in the property by executing conveyances in favour of third parties. Consequently, the partition process was required to be undertaken in a manner that duly considered such alienations and the resultant modifications in the proprietary rights of the parties

concerned.

2. The parties to the present proceedings are ad idem on the fact that, in relation to Gat Nos. 381 and 461, the decree specifically recognizes a 1/3rd share as belonging to the concerned parties. However, while preparing the partition chart, the Tahsildar has erroneously taken into account the entirety of the land, rather than restricting the partition to the extent of the 1/3rd share, as stipulated in the decree. This approach of the Tahsildar constitutes a fundamental error in the exercise of jurisdiction, as it contravenes the express mandate of the decree and results in an impermissible alteration of the parties' rights thereunder. Since the preparation of a partition chart in deviation from the decree amounts to an act in excess of jurisdiction, the same is liable to be set aside.

3. In view of the aforesaid, the partition chart prepared by the Tahsildar, Pandharpur, vide order dated 16 January 2014 in proceedings bearing No. Darkhast/SR/5/12, is hereby quashed and set aside, being legally unsustainable.

4. The Tahsildar, Pandharpur, is directed to prepare a fresh partition chart, ensuring that only the 1/3rd share in Gat Nos. 381 and 461 is considered for partition, strictly in conformity with the decree passed in Regular Civil Suit No. 689 of 1987.

5. While preparing the fresh partition chart, the Tahsildar shall also take into consideration the fact that certain co-sharers have sold their respective shares in the property. Consequently, the partition chart must reflect the present ownership structure,

ensuring that the rights of the purchasers, if any, are duly recognized to the extent permissible under law.

6. Considering that the original suit was instituted as far back as in the year 1987, it is imperative that the final partition chart be prepared with due expedition. Accordingly, it is directed that the Tahsildar shall complete the process after affording a reasonable opportunity of hearing to all concerned parties and shall finalize the partition chart within a period of three months from the date of appearance of the parties before him.

7. The parties shall remain present before the Tahsildar, Pandharpur, on 24 March 2025 at 10:30 a.m., without fail, to facilitate the expeditious completion of the partition proceedings.

8. The writ petition is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

9. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)