

Shabnoor

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

WRIT PETITION NO.9645 OF 2023

Rajaram Kallappa Pawar
(Since Deceased) Through Legal Heirs
& Anr.

... Petitioners

V/s.

Shalan Shivaji Chougule & Ors.

... Respondents

Mr A. Y. Sakhare, Sr. Advocate i/by Mr. R. S. Mirapury
for petitioners.

Mr. Kishor Patil i/by Mr. Pratik B. Rahade, for
respondent No.1.

Mr. Vijay D. Patil, Sr. Advocate i/by Mr. Vivek B. Rane,
for respondent Nos.2A to 2F.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 21, 2025

P.C.:

1. The Executing Court, by the impugned order dated 6th May 2023, modified the decree, holding that judgment-debtor Nos. 3A to 3G are entitled to a 1/4th share in the field as well as the house properties. The co-defendants and judgment-debtors have challenged this order, contending that the original plaintiff, in the second appeal arising out of the preliminary decree of partition, had relinquished her share in the dwelling house and agricultural property.

2. Therefore, they argue, the plaintiff is not entitled to claim

any right in the dwelling house or the properties in relation to which she had relinquished her share. It is a settled principle of law that relinquishment of rights by a co-parcener in joint family property extinguishes the co-parcener's rights to the extent relinquished and must be construed strictly in accordance with the terms of such relinquishment.

3. Mr. Sakhare, learned senior advocate for the petitioner, submitted that the application filed before the Executing Court sought relief in favor of judgment-debtor Nos. 3A to 3G and the original plaintiff. The operative part of the order allows the application, which may be interpreted to mean that the plaintiff, who had relinquished her share, is also held to be entitled to a share.

4. The impugned order passed by the Executing Court reads as under:

"ORDER

1. The application is hereby allowed.

2. The decree drawn by my predecessor in M.C.A. No.119/2017 be amended, and it be written that the judgment-debtor Nos. 3A to 3G are entitled to a 1/4th share in the field as well as the house properties. Their share shall be equal with other co-parceners in respect of the properties mentioned.

3. The decree be amended accordingly and sent to the Collector for partition of suit property No. 1A.

4. The house properties be partitioned by appointing the commissioner."

5. A careful reading of the operative part of the order makes it clear that the application is allowed only to the extent specified in

clause (2) of the operative part of the order. Clause (2) unequivocally confers the benefit solely upon judgment-debtor Nos. 3A to 3G. Therefore, the apprehension expressed on behalf of the petitioners regarding the inclusion of the plaintiff, despite her relinquishment, is unfounded and misconceived.

6. It is well-settled that orders passed by the Executing Court must be interpreted strictly in accordance with the decree, and any modification should be consistent with the decree's terms and the parties' rights as crystallized therein. The impugned order does not exceed the jurisdiction of the Executing Court or prejudice the rights of the petitioners, as it merely clarifies the entitlement of judgment-debtor Nos. 3A to 3G, without affecting the relinquished rights of the plaintiff.

7. With the above clarification, the writ petition stands dismissed. The parties are directed to bear their own costs.

(AMIT BORKAR, J.)