

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9428 OF 2023

Ramchandra Shivaji Mahadik ...Petitioner

Versus

Sulochana Hanmant Mahadik and ors. ...Respondents

Mr. Kirankumar Phakade, for the Petitioner.

Mr. Vishwenath Talkute, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED : 29th APRIL, 2025

Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order passed by the learned Civil Judge, Koregaon, on an application (Exhibit-28) to dismiss the execution proceeding filed by the respondent. The application was preferred with a contention that the final decree proceedings have not been concluded and, therefore, the execution petition be dismissed.
3. The learned Civil Judge was persuaded to reject the application observing that the Court Commissioner was appointed and the Court Commissioner has submitted report suggesting partition of the house property in terms of clause (4) of the decree passed in RCS No.37 of 2014.

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2025.05.01
09:59:59 +0530

4. The learned Counsel for the petitioner submitted that the procedure envisaged by Order XXI Rule 14 of the Code of Civil Procedure, 1908 (“the Code”) has not been followed. The learned Counsel for the respondent invites attention of the Court to the report submitted by the Court Commissioner suggesting partition of the house property. It does not appear that the petitioner had appeared before the Executing Court and filed any objection to the report of the Court commissioner suggesting partition. The learned Civil Judge was fully justified in rejecting the application to dismiss the execution petition.

5. By way of indulgence, two weeks time is granted to the petitioner to appear before the Executing Court and file objection to the report submitted by the Court Commissioner suggesting partition.

6. In the event such objection is filed, the Executing Court is requested to consider the same and pass an appropriate order as expeditiously as possible.

7. Subject to aforesaid liberty, the petition stands dismissed.

[N. J. JAMADAR, J.]