

Pdp

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

**WRIT PETITION NO. 1941 OF 2012
WITH
CIVIL APPLICATION NO. 2062 OF 2015
AND
CIVIL APPLICATION NO. 2911 OF 2014**

Shrirang Manku Kadam .. Petitioner

Versus

Sindhu Niwasrao Mohite & Ors. .. Respondents

Mr. Sandesh D. Patil a/w Ms. Divya Arvind Pawar for petitioner.
Mr. Tejpal Ingale with Vrunali Vilankar for respondents.

Digitally signed
by PRAVIN
DASHARATH
PANDIT
Date:
2025.07.16
19:26:15 +0530

CORAM: ALOK ARADHE, CJ.

DATE: 16th JULY, 2025

ORAL ORDER:

1. This petition under Article 227 of the Constitution of India emanates from an order dated 16th January, 2012 by which the application filed by the respondents for impleadment after the final decree was drawn has been allowed.

2. Facts giving rise to filing of the preset writ petition, in nutshell, are that the petitioner/plaintiff filed Regular Civil Suit No. 125 of 1991 seeking relief for partition of joint family property. The aforesaid civil suit was decreed on 31st August, 1996. The respondents filed an appeal, namely, Regular Civil Appeal No. 633 of 1999. The Appellate Court by judgment and order dated 24th January, 2006 dismissed the appeal

confirming the judgment and decree passed by the trial court with some modifications in the share. Thereafter the petitioner, on 11th October, 2006 filed an application for drawing up final decree. The aforesaid application was allowed on 1st September, 2009. The respondents filed an appeal against the order passed in final decree application No. 11 of 2006 by way of Regular Civil Appeal No. 23 of 2011. After the final decree application is filed, the respondent no.1 made prayer for modification of the decree by preferring Misc. Diary Application No. 1 of 2011 under Sections 151 and 152 of the Civil Procedure Code, 1908. The trial court by the impugned order dated 16th January, 2012 allowed the said application. Hence, this writ petition.

3. Learned counsel for the petitioner fairly submitted that after the amendment of Section 6 of the Hindu Succession Act, 1956, the respondents can seek impleadment in the preliminary decree proceedings before the final decree is drawn. In this connection, reference can be made to the decision of the Supreme Court in ***Ganduri Koteswaramma & Anr. Vs. Chakiri Yanadi & Anr., (2011) 9 SCC 788***. It is, however, submitted that in the instance case the final decree was already drawn and, therefore, the trial court erred in allowing the application. It is also urged that the appropriate remedy for the respondents to pursue the remedy of appeal, which has been filed by them against the final decree.

4. On the other hand, learned counsel for the respondents has supported the impugned order and has submitted that the final decree has not been drawn.

5. I have considered the submissions made on both the sides and perused the record.
6. From the perusal of the record, it is evident that the petitioner, on 11th October, 2006, filed an application for drawing up final decree, which was allowed on 1st September, 2009. The respondents have filed an appeal, namely, Regular Civil Appeal No. 23 of 2011 before the Appellate Court against the final decree. However, the application filed by the respondents under Sections 151 and 152 of the CPC has been allowed on the assumption by the trial court that the final decree has not been drawn, which is completely incorrect.
7. The impugned order, therefore, suffers from jurisdictional infirmity as well as error apparent on the face of the record. It is, therefore, quashed and set aside. However, liberty is reserved to the respondents to prosecute the remedy of appeal against the final decree.
8. Accordingly, the writ petition is allowed.
9. Civil Applications, if any, shall also stand disposed of.

(CHIEF JUSTICE)