

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2742 OF 2025
IN
SECOND APPEAL NO. 256 OF 2025

Balkrushan Shankar Pawar

....Applicant
Original Plaintiff/Appellant

: Versus :

Deputy Superintendent of Land Record,
Pen & Ors.

....Respondents

MR. ROHIT JOSHI, *for the Applicant.*

MS. SHAMA MULLA, *for Respondent Nos.8, 9(a) and 10.*

CORAM : SANDEEP V. MARNE, J.

DATED : 9 MAY 2025.

P.C. :

- 1) The Appeal has already been admitted by a separate order.
- 2) When the Appeal came up for hearing on 26 February 2025, this Court has passed the following order :

1. Heard Mr. Joshi, the learned counsel appearing for the Appellant.

2. It appears that in Regular Civil Suit No.44 of 1989, the Appellant has secured a decree for 1/5th share in suit properties bearing Gat Nos.234, 378/3 and 379A/5. According to Mr. Joshi, the decree merely issued a declaration of 1/5th share and did not contain any direction for partition, thereby making provisions of section 54 of the Code of Civil Procedure, 1908 wholly inapplicable in respect of that decree. It appears that Defendants in the said RCS No.44 of 1989 (Satyawati Harishchandra Pawar-Defendant No.1) applied to the Collector for effecting partition by metes and bound of only one land bearing Gat No.234 and acting on the said application of Smt. Satyawati, the Collector issued letter dated 29th October, 2020 to the Tahasildar for taking action for partition of land bearing Gat No.234 by metes and bounds. It is Appellant's case that the Defendants in RCS No.44 of 1989 have already sold/created third party rights in respect of lands bearing Gat Nos.378/3 and 379A/5 and the real game plan in applying for partition of Gat No.234 before the Collector is to deny any share to the Appellant in lands bearing Gat Nos.378/3 and 379A/5 and to sub-divide land bearing Gat No.234 in such a manner that the Appellant secures 1/5th share only in respect of Gat No.234. It appears that the Appellant has filed an application for execution of the decree passed in RCS No.44 of 1989 and considering the fact that third party rights are already created in respect of other two lands, it is Appellant's endeavour in the execution application is to adjust the shares admissible in respect of Defendants in the lands bearing Gat Nos. 378/3, 379A/5, so that the entire 1/5th share of the Appellant in respect of three lands can ultimately adjusted in Gat No.234. Prima facie, I do not find any reason why Collector or Tahasildar would not undertake the very same exercise. The purported execution of the decree passed in RCS No.44 of 1989 by the Tahsildar and Collector would obviously include all the three lands for the purpose of determining respective shares of the parties. If ultimately the Tahsildar or the Collector finds that 1/5th share of the Appellant in respect of three lands needs to be adjusted only in Gat No.234, they can obviously effect partition in such a manner that Appellant's 1/5th share is ultimately protected by adjusting the same in entire Gat No.234. While the Second Appeal could have been disposed of with above observations, notices are being issued to the contesting Respondents to ensure that the above observations are not recorded behind their back.

3. Issue notice to Respondents No.8 to 11 returnable on 25th March, 2025. In addition to the Court notice, Appellant to serve

Respondents No.8 to 11 by private notice and file affidavit of service

3) *Prima-facie*, Defendant No.1-Satyawati Harischandra Pawar cannot selectively seek to partition and claim one-fifth share in Gat No.2345. What needs to be partitioned is all the three properties bearing Gat No.234, 378/3 and 379A/5. The Plaintiff-Appellant has already filed execution proceedings (*Darkhast No.8/2020*) for execution of decree passed in Regular Civil Suit No.44/1989. In execution of that decree, land falling to the share of the parties would be allotted. In that view of the matter, proceedings resulting out of Collector's letter dated 29 October 2020 are required to be stayed during pendency of the Appeal. In that view of the matter, all the proceedings initiated by the Tahasildar in pursuance of Collector's letter dated 29 October 2020 shall remain stayed during pendency of the appeal. However, the execution proceedings (*Darkhast No.8/2020*) are not stayed and infact the executing Court is requested to expedite the said execution proceedings. With the above directions, the Interim Application is **disposed of**.

4) Liberty to the Appellant to apply to the Executing Court to seek injunctive relief against the Respondent from creating third party rights in the suit property.

[SANDEEP V. MARNE, J.]