



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1351/2025

Smt. Kamalbai wd/o Namdeo Borikar and Ors. .VS. Sau. Mangala Parmanand Dudhe
and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. Geetabali J. Lande (Ku. Geetabali N. Borikar) in person.
Mr. S. D. Malke, Advocate for respondent Nos. 1 and 2.

CORAM : ANIL L. PANSARE, J.

DATE : JUNE 23, 2025

After having heard for some time, it appears that the petitioners are aggrieved by non cooperation of respondent to effectively partition the property. Learned counsel submits that the subject matter of the decree are two plots. One admeasures 74.40 Sq. Mtr. and another 393.9 Sq. Mtr. The counsel further submits that the structures are standing on both the properties. The decree as passed indicates that the parties were held entitled for 1/7th share each. The Executing Court noted that the property is not capable of partition. The Court accordingly held that the only remedy available is to auction the property and thereafter to distribute the amount equally.

2. Counsel for the petitioner submits that she will place on record copy of map showing how property could be partitioned.

3. At this stage, learned counsel for the respondents has invited my attention to paragraph 13 of the impugned order wherein the Executing Court has noted that the judgment debtor Nos.1 to 5 (petitioners herein), in their reply to the Commissioner's report, have submitted that the suit property is not capable of partition.

4. Thus, it appears that the petitioners are fully aware that the suit property is not capable of partition. Despite such status, the

petitioners have challenged the order by which the Executing Court directed to auction the property and to distribute the sale proceeds amongst the parties as per shares declared in the decree.

5. Counsel for the petitioner submits that old aged persons are residing in the suit property and, therefore, sympathetic view may be taken.

6. To my mind, under the garb of sympathetic view, the Court cannot bye-pass the provisions of law and also the practical difficulties faced in executing the decree, particularly when the petitioner themselves have submitted that the property cannot be partitioned. The only option available is to sell the property for distribution of shares, which the Executing Court has rightly ordered. Accordingly, with complete sympathy, the petition is dismissed. No order as to costs.

(Anil L. Pansare, J.)