



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

APPEAL FROM ORDER NO.50/2023

Madhavrao Ramaji Hinge.Vs.State of Maharashtra through Collector, Wardha & Ors.

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

Court's or Judge's orders

Mr. D. R. Bhoyar, Advocate for appellant.
Mr. K. R. Lulay, A.G.P. for respondent Nos. 1 and 2.
Mr. N. R. Bhishikar, Advocate for respondent Nos. 3 to 7 and 9.
Mr. V. R. Mishra, Advocate for respondent Nos. 10 to 17.

CORAM : **ANIL L. PANSARE, J.**

DATE : **JANUARY 20, 2025**

Heard learned counsel for the parties at length.

2. Appellant-original plaintiff in Regular civil Suit No. 292/2022 was one of the defendants in the suit filed by respondent Nos.3 to 5 being Special Civil Suit No 21/1976. The suit of 1976 was filed for partition. The suit came to be decreed. The execution proceedings were then filed. Precept came to be issued. Partition, however, was not effected because the Tahsildar concerned noted that the partition would result into fragmentation, which is not permissible in terms of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the, "Fragmentation Act").

3. According to the appellant, respondent No.2 had, vide order dated 30.09.2021, closed the proceedings by mentioning that the decree cannot be executed, as will be violative of the provisions of the Fragmentation Act.

4. I have gone through the said order. The Tahsildar has considered the fact that the physical partition will lead to fragmentation and directed the Talathi concerned to mutate the suit property in the joint names of the parties to the earlier suit.

5. The said order was challenged before Sub Divisional Officer by respondent Nos.3 to 7 and 9, but of no avail. Respondent No.2 has allegedly reopened the earlier proceedings, at the instance of respondent Nos.3 to 5 and 9 requesting the Tahsildar to mention boundaries of areas to be allotted to the parties to the suit of 1976. The Tahsildar issued notice dated 15.11.2022, calling upon the parties to the suit of 1976 to remain present for effecting partition.

6. This proceeding, according to the appellant, could not have been reopened and, therefore, subsequent suit came to be filed, seeking declaration and injunction. The Trial Court rejected the plaint on the ground that the revenue authorities have jurisdiction to effect partition of agricultural land as per the decreetal mandate. The Tahsildar i.e. respondent No.2, vide order dated 30.09.2021, was of the view that partition cannot be effected and accordingly instructed Talathi concerned to mutate the suit property in the joint names. Thus partition was not completed. According to the Trial Court, the Tahsildar was well within the jurisdiction when he issued notice to remain present for further action to execute the decree, particularly when there were no pleadings and relief sought on the ground that the Tahsildar had contravened the terms of partition decree during execution. The Court noted that Section 4 (a) of the Bombay Revenue Jurisdiction Act, 1876, would bar Civil Court to entertain the suit in the matter of distribution of land on partition and thus the suit is not maintainable in terms of Section 11 of the Bombay Revenue Jurisdiction Act, 1876.

7. Thus, what transpires is that Special Civil Suit No.21/1976 was decreed. The partition was to be effected. Respondent No.2 – Tahsildar, on receipt of precept, made an attempt to partition the suit property but found that physical partition would contravene the provisions of the Fragmentation Act. There is nothing on record that Tahsildar has, on its own, initiated the proceedings or that the said

proceedings were closed to raise a plea of reopening the proceedings. The Trial Court appears to have rightly held that pending execution of the decree, the revenue authorities are bound to take efforts to execute the decree and in that sense there will be no independent proceeding arising before Tahsildar and/or to argue that the proceeding that was commenced was either closed and then reopened. The decree is to be executed. The Tahsildar will be, therefore, well within his jurisdiction to take all necessary steps including issuance of notice as and when required to the parties concerned to appear before it and render necessary assistance.

8. In the circumstances, the parties to the suit ought to approach the Executing Court for redressal of their grievance. The execution proceedings cannot be halted by filing a suit. The injunction, as sought to protect the possession, amounts to obstruction in execution proceedings.

9. In view thereof, there arises no question of entertaining an application for injunction pending challenge to the order of rejection of plaint inasmuch as there is no prima facie case in favour of appellant. No interference is, therefore, called for in the impugned order. The appeal is dismissed. No order as to costs.

(Anil L. Pansare, J.)