

MHAH250006462025



R.D.NO.5/2025
Laxman Wabale and ors.
Vs.
Suhas Wabale & Ors.

ORDER BELOW EXH.5

This order shall dispose of an application filed by the decree holder for temporary injunction.

2. Decree holders submit that present execution proceeding is filed for execution of the decree in RCS no. 6/2024. The decree holders were defendants no. 9,10 and 11 in the suit. A settlement was reached in Lok Adalat on 3/3/2024 and settlement agreement was filed at Exh.13 wherein, the shares were fixed in the agreement. Defendant no.10 i.e D.H. no. 2 Reshma was given 1H 50 Ares and 2.33 Ares *potkharaba* land in Gat no. 328. D.H. no.3 Viraj was given 32.33 Ares land in Gat no. 327. D.H. no. 1 Lakshman was given 1H 28.34 Ares Land and 2.66 Ares *potkharaba* land in gat no. 245. While giving such lands by partition, those lands were given out of the end divided share of some landholders. Out of such lands, most of the area is in possession of the decree holders. However, till the execution of the partition, all the landholders have possession as tenants in common. Unless the decree is executed, the boundaries and directions will not be fixed. Land of one landholder is expected to go to the other landholder. If some fundamental changes are made in the suit property, if new construction is made in the suit property, there will be complexity in the proceeding. The J.Ds are not actively seeking to execute the decree. Decree holders have further submitted that J.D. no. 1, 2, 10 to 13 have started the permanent construction in gat no. 327 and 328 even before the execution of decree. JD no.2 has transferred gat no. 328 in the name of his Son i.e. JD no.1 and he himself has availed loan from Bank of Baroda. Decree holders have a prima facie case and balance of convenience in their favor. If the

temporary injunction is granted no prejudice will be caused to the J.Ds. Hence, decree holders have prayed for grant of temporary injunction restraining the J.D. no. 1, 10 to 13 from permanently or temporary constructing in the suit property and from changing the basic nature of the suit property till the partition is carried out by showing the directions.

3. JD No.1 has filed his say at Exh.37 on application at Exh.16. Learned Adv. for JD No.1 has submitted that, the say filed at Exh.37 is also the say filed on present application. JD No.1 has submitted his say at Exh.37, mentioning that, decree holder filed RCS No.6/2024 for partition and in that suit, the JD No.1 to 3 were kept in dark and the contents in settlement agreement were not given to him for reading and on the pretext of mentioning directions and on the pretext of partitioning Gat No.275 in order to cheat the JD No.1 to 3, the decree holders got the suit decreed in respect of Gat No.328 and other lands hastily, without the consent of JDs. Actually, the original ancestor of DHs and JDs namely Ganpat Wabale equally partitioned between his three sons and three daughter-in-laws in the year 1990 and accordingly the entries were taken in 7/12th extract and they were respectively cultivating and taking crops from it. Mutation entry no.284 was taken in that regard. Hence, there was no need for new partition and only to get the good *bagayat* land made by bearing expenses by JD No.1 to 3 in Gat No.328, the DHs got greedy and with that malafide intention, they got the settlement done in RCS No.6/2024 by cheating the JD no.1 to 3 and keeping them in dark. Actually, the land Gat No.275 standing in the name of Ganpat Wabale and the house property situated within the limits of Grampanchayat Mhasane is not added in the suit. Hence, without adding the ancestral properties and house properties, the decree has been obtained and such decree is not tenable and maintainable. The DHs will not get any ownership and possession by virtue of such decree.

When JDs came to know, they took out documents of decree and other documents and came to know of cheating and soon filed the RCS No.616/2025 for cancellation of the decree on the ground of fraud and being not binding on them. The suit is pending. Hence, unless all the ancestral properties are not partitioned in equal manner, till then, on the basis of the decree, no ownership right will accrue. JD has further submitted that, JD No.1 to 3 were in possession of the land in Gat No.328 since the year 1990. JDs spent huge amount on it and made it a fertile land. The said land is taken by DHs in their name by virtue of decree. The land which is infertile has been given to JD No.1 to 3. Hence, DHs have cheated the JDs. In such circumstances, when the decree was not executed DHs are obstructing the JDs in their cultivation of the land in Gat No.328. The whole family of JDs is dependent on the farming of land in Gat No.328 and they have no other source of income. DHs are looking to forcefully take the possession by making complaints. Unless the lawful partition is made, there is no question arise of obstructing the JDs by the DHs. As per section 54 of CPC, it is necessary to make partition by preparing partition chart and take possession in legal manner. However, DHs are taking law in their hands and they are obstructing the JDs No.1 to 3 from cultivating in land Gat No.328. The 7/12 extract actually has entry in the name of JD No.1 to 3 and possession is also of JD No.1 to 3. Hence, J.D. No.1 has prayed for rejection of application and has prayed for grant of temporary injunction against DHs restraining them from obstructing JD No.1 to 3 in their cultivation over the land Gat No.328.

4. J.D. No.10 to 13 failed to file say on the application. Hence, the application proceeded without say against JD No.10 to 13.

5. Heard learned advocate for D.H. and learned advocate for J.D. No.1.

6. Having considered the submissions and documents placed

on record, following points arose for my determination, the findings on which with reasons, I have stated as below:

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether D.H. has made out a prima-facie case for issuance of temporary injunction against J.D. No.1, 10 to 13 as prayed?	Yes.
2.	Whether the balance of convenience lies in the favour of D.H.?	Yes.
3.	Whether irreparable loss would cause to the D.H, if injunction as sought for is not granted?	Yes.
4.	What order?	As per final order.

7. In support of their case, DH have filed copy of Exh.1 in RCS No.6/2024, copy of award, copy of settlement agreement, 7/2 extracts of Gat Nos.275, 327, 245, 266 and 228 vide list of documents at Exh.3, photographs of suit properties and receipt of photographs vide list of documents at Exh.19, photographs of suit properties, receipt of photographs, receipt of message for calling on 112 number, complain application given by DH to police, application for conducting panchnama given to Talathi by DH, google maps photographs vide list of documents at Exh.43. JD Nos.1 and 10 to 13 have not filed any documentary material on record at this stage.

REASONS

AS TO POINT NO.1 TO 3:-

8. The present proceeding is an execution proceeding for the award passed in a Lok Adalat in RCS No.6/2024. The suit was filed for partition and record shows that, award in Lok Adalat was passed on 03/03/2024 in view of settlement agreement filed in the suit at Exh.13. The defendants No.9 to 11 have filed present execution proceeding as

decree holders against the plaintiffs and other defendants. Through the present application, it is prayed that, unless the partition is carried out by showing directions, the JDs shall not carry out permanent or temporary construction and they shall not change the original nature of the suit property. DH claim that, JDs No.1, 2 and 10 to 13 started permanent construction in Gat No.327 and 328. On the contrary, JD No.1 has contended that, the award has been obtained by playing fraud and that separate suit has been filed in the Parner Court challenging the award. However, in the present case, the suit involved the relief of partition and the award of Lok Adalat was regarding the partition, the execution of which, involves physical division of land. If a party is alleged to have started construction or created a bank charge before the actual physical boundaries are drawn, it may make the final partition impossible or it might prejudice the other co-owners. The executing Court has the power to protect the subject matter of the decree while the execution is pending. During the execution of decree in a suit for partition, the property remains joint until the final physical possession is delivered. The settlement agreement between the parties has formed the part of the award passed in Lok Adalat. Adv. for DHs has relied upon the judgment of Hon'ble Madhya Pradesh High Court in the case of Dilip Mehta v. Rakesh Gupta (Writ Petition No.22367/2022) wherein it has been observed that, every award passed by permanent Lok Adalat under this Act in terms of settlement agreement shall be final and binding on all parties thereto and on persons claiming under them. Further, in the case of Pushpa Devi Bhagat (D) through Lrs. v. Rajinder Singh and ors. reported in AIR 2006 SC 2628, it was observed by Hon'ble Supreme Court that, "12. *The position that emerges from the amended provisions of Order 23, can be summed up thus :*

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in section 96(3) of the Code.”

9. On the other hand, JDs have challenged the award on the ground of fraud. However, in the case of Dilip Mehta v. Rakesh Gupta

(SLP [C] No.27806/2023), it has been held by Hon'ble Supreme Court that, *“the statutory finality attached to a Lok Adalat award leaves no room for an appellate or plenary civil remedy. The validity of such an award cannot be reopened through an ordinary civil suit or by treating execution proceedings as a vehicle for setting it aside. The only recognized avenue of challenge is the constitutional jurisdiction of the High Court under Articles 226 or 227 of the Constitution of India, which is supervisory and exceptional in nature. This applies equally to a party to the award and a third party affected by it”*. Further, it was also held that, *“while these provisions enable an Executing Court to address incidental questions during execution (such as the extent of enforceability against a person in possession), they do not authorize the Court to examine the validity of the award itself or declare the decree based upon it void. The executing Court has no authority to annul or set aside a decree that embodies a Lok Adalat award, nor can it sit in judgment over the validity of the compromise. Filing of objections in execution cannot be treated as an efficacious alternative remedy that bars writ relief.”*

10. In view of aforesaid observation, even if there is objection by JD as regards the award being allegedly obtained by fraud, still, it is necessary to consider that the executing Court has no authority to annul or set aside a decree that embodies a Lok Adalat award, nor can it sit in judgment over the validity of the compromise. Hence, considering that, DHs have been allotted the share in settlement agreement and considering that, the settlement agreement forms the part of the award and that the award is yet to be executed and physical possession of the shares as agreed is yet to be given to the respective parties, it would be appropriate to grant temporary injunction in favor of DHs in order to preserve the status of suit property until the award is executed. It would be more convenient to grant to temporary injunction to stop construction until execution of the partition than to allow a construction

to come up and then have to demolish it later. Considering that the proceeding involves award of Lok Adalat, which has statutory finality, it is necessary to execute such award and it is necessary to grant temporary injunction in order to ensure that the fruits of the decree are not destroyed before the DHs can enjoy them. The construction in the suit properties without actual physical partition of the shares as mentioned in the settlement agreement forming part of award, might obstruct and disturb the actual partition as directed under the settlement agreement which forms the part of award of Lok Adalat. As mentioned earlier, it is necessary to preserve the subject matter of the suit and it is necessary to ensure that, the land is available in its original state for division. If construction is allowed to be carried out on the suit property, there might be difficulty to execute the award of Lok Adalat. Hence, considering the aforesaid reasons, DHs have a prima facie case for grant of temporary injunction and the balance of convenience lies in their favor and if the construction is allowed to be carried out, they might suffer irreparable loss. Hence, I answer point No.1 to 3 in affirmative and in answer to point No.4, I pass the following order:-

ORDER

1. Application at Exh. 5 is allowed.
2. JD No.1 and 10 to 13 are temporarily restrained from carrying out any temporary and permanent construction in the suit properties, till the award of Lok Adalat is executed.

Date: 30/03/2026

(Dr. N.S. Sabnis)
Jt. Civil Judge, Junior Division,
Parner.