

MHNS100000182018



M.A.C.P. Darkhast No.1/2018

Mandabai Madhukar Charoskar & Other-3

Vs.

Devidas Bhaskarrao Gaikhe

Common Order below Exh.48 & 53

Read application and say filed by judgment debtor vide Exh.50. Heard Advocate Shri. S.J. Bhosale for the decree holder and advocate Shri. R.J. Thakre for the judgment debtor.

2. Advocate Shri. S.J. Bhosale submitted that in MACP Application No.88/2010, the judgment debtor was ordered to pay compensation of Rs.14,44,680/- along with interest at the rate of 7%. An amount of Rs.28,22,037/- is due with judgment debtor. Judgment debtor has not paid any amount to the decree holders despite appearing in execution application.

3. Advocate Shri. Bhosale submitted that land block no.1030 is ancestral property of judgment debtor. Judgment debtor has undivided share in it. On an application of the decree holders, said property is attached as per Order 21 Rule 54 of Civil Procedure Code. However, compensation amount is yet not

received. Therefore, attached land block no.1030, needs to be sold as per Order XXI Rule 66 for recovery of compensation amount. Therefore, property bearing land block no.1030, located at Chandori be ordered to be sold in public auction and proclamation for that may be issued.

4. Advocate Shri. S.J. Thakre submitted that judgment debtor can not pay amount of compensation due to his poor condition. Advocate Shri. Thakre submitted that decree holder has not given boundaries in land block no.1030. Said property is also not in possession of judgment debtor. The land is jointly owned by Bhaskar Mhaloji Gaikhe and his sister Meerabai Yashwant Mogal. However, they are not served with notices.

5. Advocate Shri. R.J. Thakre submitted that the judgment debtor has filed separate application for issuing direction to the decree holder for issuing notices to the joint owners of land in block no.1030. Hence, the application be rejected.

6. MACP Application No.88/2010 is decided on 02/08/2017. However, judgment debtor has not paid amount of compensation due from him. Warrant of attachment of movable property is not executed. Vide order dated 29/09/2022, land in block no.1030 is attached for recovery of amount of compensation. Despite it, amount of compensation is not paid. As per mutation entry no.7629, land in block no.1030 appears to be ancestral property of judgment debtor. Judgment debtor is

having undivided share in it. In such circumstances, I am of view that 1/6th undivided share of judgment debtor can be sold by public auction for recovery of compensation amount.

7. Despite attachment of land in block no.1030, nobody came in the Court to resist attachment of said property. In such circumstances, I am of view that there is no need to issue notices as claimed by the judgment debtor. Therefore, application filed by judgment debtor seeking direction to issue notices to joint sharers needs to be rejected. Hence, I pass the following order.

ORDER

- 1) Application at Exh.53 is rejected.
- 2) Application below Exh.48 is allowed.
- 3) Issue proclamation of public auction sale of 1/6th undivided share of judgment debtor land in block no.1030, located at Chandori as per Rule XXI Order 66 of Civil Procedure Code.

Place: Niphad
Date : 15/01/2025

Member, M.A.C.T.
Niphad.