

MHNS140016282025 C.M.A.No.61/2025



Nanasaheb Tryambak Date and others
Vs.
Janardan Ramchandra Dhumne and
others.

ORDER BELOW EXH.5

The present application is filed by the applicants to stay the execution of decree in RCS No.10/1997 and the execution of final order in RD No.5/2014 till final decision of the present main application.

2. The present matter proceeded ex-parte against non-applicants No.1 and 4 and without say against non-applicants No.3A to 3D. The non-applicant No.2 has filed his say at Exh.33. Heard Ld. Advocate Shri. N. J. Deshpande for the applicants and Ld. Advocate Shri S. V. Gaikwad for non-applicant No.2.

3. Ld. Advocate for the applicants submitted that, the applicants are the legal heirs of the plaintiff in RCS No.10/1997(hereinafter referred as the plaintiff for convenience). Non applicants No.1, 2 and 4 were defendants no.1, 2 and 4 in RCS No.10/1997 and non-applicants No.3A to 3D are legal heirs of the defendant No.3 in RCS No.10/1997 (hereinafter referred as the defendants for convenience). He submitted that the properties mentioned in the application were the suit properties in RCS No.10/1997. The said suit was filed for partition and injunction. It was decreed on 23/02/2001. As per the decree passed, the

plaintiff was allotted 1/15th share in the suit properties. Thereafter, the partition was effected and the applicants got possession of 3.40 HR and 0.10 R potkharaba land from Gat No.545 and 23 R land from Gat No.60 on 10/01/2011 and 14/01/2011 respectively. Thereafter, defendants No.1 and 2 filed civil application No.7/2012. When the plaintiffs appeared in the said Civil Miscellaneous Application, they came to know that there is difference in the share written in the judgment and decree prepared for the judgment. The said application No.7/2012 was allowed. Thereafter, defendants No.1 and 2 filed Regular Darkhast No.5/2014. It was decided on 08/10/2014. As per the order in RD No.5/2014, the amended decree was to be sent to the Collector. The plaintiffs had filed Writ Petition before the Hon'ble High Court bearing writ petition No.2646/2015. The status-quo was granted in the writ petition on 18/03/2015. It was continued till 07/10/2025. The Hon'ble High Court allowed to file amendment application before this court for amendment in the decree passed on 23/02/2001. It was allowed in view of the subsequent changes in the Hindu Succession Act, 1956.

4. He further submitted that, in RCS No.10/1997, the plaintiff was given 1/15th share as per the provisions of the Hindu Succession Act prevailing at that time. However, in the year 2005, the amendment has taken place and the plaintiff is entitled to 1/5th share instead of 1/15th share. The final decree is not yet passed in RCS No.10/1997. Due to clerical mistake, the decree which was drawn up contained 1/5th share and accordingly, the plaintiff was allotted 1/5th share. As per the subsequent changes and precedents, the plaintiff is entitled to 1/5th share. The

applicants have done leveling in Gat No.545, they have taken bore well and well alongwith electric motor in Gat No.545. They have taken pipeline in Gat No.545. Further, there is house of applicants in Gat No.545. They have taken sugarcane crop and soybean crop in Gat No.545. If the execution of RD No.5/2014 is done, the plaintiffs will have to suffer irreparable loss. In view of the latest position of law mentioned in Vineeta Sharma Vs. Rakesh Sharma and others (AIR online 2020 SC 676) and subsequent precedents, the preliminary decree can be amended for shares of the daughters if the final decree is still pending. The final decree is not yet passed for RCS No.10/1997. Hence, the present main application is filed to amend the share of the plaintiff i.e. applicants being legal heirs of the original plaintiff in RCS No.10/1997. In such circumstances, if the execution of decree is done as per the order in RD No.5/2014, the applicants will have to suffer irreparable loss. Hence, the present application be allowed.

5. Ld. Advocate for the non-applicant No.2 submitted that the applicants knew that there is a clerical error in the decree drawn up from the judgment in RCS No.10/1997. The applicants deliberately did not show the copy of judgment to revenue authority and obtained the possession of 1/5th share. The original plaintiff in RCS No.10/1997 had died on 26/11/2004. The applicants have no right to pray for alteration or modification or amendment in the decree passed in RCS No.10/1997. The applicants could have taken possession of 1/15th share only. However, they deliberately took possession of 1/5th share. The execution of RD No.5/2014 is sent to the Collector. When it went

to TILR, the applicants deliberately filed Writ Petition before the Hon'ble Bombay High Court. Further, the applicants deliberately prolonged the Writ Petition and when the said matter was pending for final order, the applicants withdrew the writ petition. The applicants do not want to give back the possession of excess land which was fraudulently obtained on the basis of clerical error in the decree. The decree drawn up has been amended after the application filed by the defendants in C.M.A. No.07/2012. The present main application filed by the applicants is itself not maintainable. Hence, the application be rejected.

6. Perused documents filed on record. It is an admitted fact that, as per the prevailing position of law, the plaintiff in RCS No.10/1997 was given 1/15th share as per the judgment dated 23/02/2001. The appeal was filed by defendants but it was dismissed in default. It is an admitted fact that the decree passed in RCS No.10/1997 is still in force. The plaintiff in RCS No.10/1997 died in the year 2004. Accordingly, her legal heirs i.e. the applicants in the present proceeding obtained the possession of the land in Gat No. 545 and Gat No.60 through possession receipt on 10/01/2011 and 14/01/2011 in view of the order of Tahsildar dated 24/12/2010. On perusal of the said order dated 24/12/2010, the said order was passed on the basis of decree showing 1/5th share of the plaintiff. It is mentioned in the order that the defendants No.1 and 2 in RCS No.10/1997 had given written objection but they remained absent at the time of hearing. Accordingly, the possession of 1/5th share was given to the applicants on 10/01/2011 and 14/01/2011.

7. The defendants No.1 and 2 in RCS No.10/1997 filed an application for correction in the decree bearing C.M.A. No.7/2012. The said application was allowed as per section 152 of the Code of Civil Procedure. Hence, the correction in the decree was done from 1/5th to 1/15th share as per the judgment. Thereafter, the defendants No.1 and 2 filed RD No.5/2014 to execute the order in RCS No.10/1997 as per the correction done in the decree. The said darkhast was finally decided on 08/12/2014. On perusal of the order in RD No.5/2014, both the parties were heard and it was held that the partition was effected on the basis of incorrect decree and hence, the repartition is required as per the corrected decree and it be sent to the Collector for appropriate steps. Thereafter, the present applicants filed Writ Petition in the Hon'ble High Court.

8. During these years, the defendants No.3 and 4 of RCS No.10/1997 filed RD No.1/2011 against the defendant No.1 and 2 and the plaintiff's legal heirs for partition. Consequently, the plaintiff was deleted from the Darkhast and compromise was done between remaining parties. The non-applicant No.2 has filed the certified copy of documents in RD No.1/2011. In the said Darkhast, the Ld. Advocate for the applicants in the present application had filed say in which it is mentioned that applicants had obtained their share as per the decree passed in RCS No.10/1997 and legally, the partition has been effected and there is no effect of partition remaining for decree in RCS No.10/1997. The record shows that the remaining parties in RCS No.10/1997 have done compromise in RD No.1/2011 and the order was passed in RD No.1/2011 to issue precept to the Collector as per

the compromise memo. It is further mentioned in the said order that the name of judgment debtor No.3 i.e. the applicant No.1 in the present application is deleted from the Darkhast as the plaintiff has obtained her share. The orders in RD No.1/2011 and 5/2014 prima facie show that both the Darkhast are finally decided.

9. The applicants themselves submitted that, they had obtained their share in the year 2011 through Darkhast before the revenue authorities. Now, applicants are claiming amendment in the preliminary decree i.e. the share be corrected from 1/15th to 1/5th share. It is an admitted fact that the judgment in RCS No.10/1997 was passed on the basis of prevailing legal position i.e. before the amendment in Section 6 of the Hindu Succession Act, 1956. It is a settled position that even if a daughter is died before the amendment, the said amendment is applicable to her legal heirs for partition. Hence, even if the original plaintiff in RCS No.10/1997 died in the year 2004, she would have entitled to the share as per the amended provision if partition had not taken place.

10. In the present case, it is the contention of the applicants that after the ratio laid down in the case of **1. Ganduri Koteshwaramma and Anr Vs. Chakiri Yanadi and Anr [AIR 2012 Supreme Court 169]**, **2. Vineeta Sharma Vs. Rakesh Sharma and Ors. [AIR online 2020 SC 676]**, **3. Prema Vs. Nanje Gowda and Ors. [AIR 2011 Supreme Court 2077]**, **4. Prasanta Kumar Sahoo and Ors Vs. Charulata Sahu and ors. [AIR online 2023 SC 763]**, **Channabasappa Vs. 5. Smt**

Parvatevva Alias Kasturevva [Writ Petition no.105363 of 2023 in the Hon'ble High Court of Karanataka], the applicants are entitled for 1/5th share in the suit properties of RCS No.10/1997 as the final decree is not yet passed. It is contended that the preliminary decree can be amended at any point of time before passing of the final decree and section 97 of the Code of Civil Procedure does not create any hindrance for the modification, amendment and alteration in the preliminary decree if the changed circumstances so require.

11. The ratio laid down in the case of Ganduri Koteshwaramma and Vineeta Sharma (Supra) are discussed in the case of **Prasanta Kumar Sahoo and Ors Vs. Charulata Sahu and ors. (supra)**. It is held in para no. 80 that;

“At the cost of repetition, we state that by virtue of the preliminary decree passed by the Trial Court, which was confirmed by the Division Bench of the High Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be regarded as fully and completely decided only when the final decree is passed. As the law governing the parties has been amended before the conclusion of the final decree proceedings, the party benefited by such amendment (like the two daughters in the case on hand) can make a request to the Trial Court to take cognizance of the Amendment and give effect to the same.”

Ld. Advocate for the applicants submitted that as per the

Chanbasappa case (supra), the provisions of amended Section 6 of the Hindu Succession Act are retroactive and hence, as the final decree is yet not passed in the present case, the preliminary decree in RCS No.10/1997 can still be amended due to subsequent changes in law as per the aforesaid case laws.

12. In Prasanta Kumar Sahoo case (supra), it is held by the Hon'ble Apex Court that the modification of the preliminary decree is permissible only on the ground of changed or supervening circumstances or change in law. In the present case, the partition was effected in the year 2011. Only, the issue is that it was done on the basis of incorrect share shown in the decree which was a clerical error. The said clerical error was sought to be corrected in C.M.A No.7/2012 and the Darkhast No.5/2014. The amendment, modification or alteration was never done in the decree passed in RCS No. 10/1997. All the suit properties are agricultural lands and the possession was obtained by applicants in the year 2011 from the revenue authorities. There is no final decree application filed for RCS No.10/1997 till today. The applicants themselves have stated that they had obtained possession of lands in the year 2011. The applicants are again contending that the final decree is not yet passed. As per the decree in RCS No.10/1997, no further enquiry is to be done in this court for final decree. The applicants are claiming the amendment in the decree only on the basis of subsequent decisions of the Hon'ble Apex Court in which it is held that if the final decree is not yet passed, the daughters can claim share as per the amendment in Section 6 of the Hindu Succession Act.

13. In the present case, the applicants were well aware that the decree is passed for 1/15th share at the time of order passed by Tehasildar in the year 2010. Still, they obtained the possession of 1/5th share on the basis of clerical mistake in the decree drawn up from the judgment. Prima facie, the change in law i.e. the amendment in Section 6 of the Hindu Succession Act was not claimed by applicants at the time of execution in the year 2010, in C.M.A. No.7/2012 or R.D. No.5/2014. Thereafter, the Writ petition was filed before the Hon'ble High Court. The writ petition was withdrawn and then the present main application is filed by applicants for amendment in the decree passed in RCS No.10/1997 by taking benefit of the decisions of Hon'ble Apex Court in aforesaid case laws. Prima facie, there is no final decree pending in the present case. The applicants have not come with clean hands as they have taken possession on the basis of incorrect decree drawn which was only a clerical mistake. The said clerical mistake is corrected in C.M.A. No.07/2012. The applicants would not have filed final decree application if the C.M.A. No.07/2012 would not have been filed by the defendants. Hence, there is no reason to stay the decree in RCS No.10/1997 and the subsequent order in R.D. no.05/2014 as prayed for. Consequently, the following order:

ORDER

The application is rejected.

Date: 18/04/2026

(S. C. Nirmale)
Civil Judge, J.D.,
Dindori