



Order below Exh.1 in
Special Darkhast No. 6/2011
(Bharati Mali etc. Vs. Ramchandra Mali etc.)

1. Earlier this court has passed an order below Exh.61 to sale the the lands mentioned in the application at Exh.61 for the purpose of satisfaction of decreetal amount in favour of D.H. On proclamation made as per Order 21 Rule 66 and 67 of Code of Civil Procedure 1908. J.D. No.6 to 8 appeared and filed their say at Exh.82 and strongly objected for the sale of properties mentioned in the application at Exh.61. Among other objections their main objection is that there is no partition by metes and bounds between co-sharers in land Gat numbers mentioned in the application Exh.61. Therefore, those properties can not be sold through auction. I find substance in this objection because on perusal of 7/12 extract of Gat No.947, 948, 959, 1008, it is seen that there are other co-sharer in addition to J.D. No.1 and those properties are in joint possession of co-sharers. That means share of J.D.No.1 has not been divided by metes and bounds, out of those properties. In case, if this court orders sale of share of J.D. No.1 out of those properties, then which specific portion of J.D. No.1 out of those properties is to be delivered to the purchaser ? Therefore, it will not be possible to this court to deliver the possession of specific share of J.D. No.1 with metes and bounds to purchaser, therefore, it is not possible for this court to sale the share of J.D. No1 in those properties.

2. D.H. relied upon Ambati Narasayya Vs. M. Subba Rao and another reported in AIR 1990, Supreme Court 119, in this ruling it is held that only such portion as would satisfy the decree should be sold out of entire property. It is further held in it that it could not be said that the land was not divisible or that the division was impracticable or undesirable, but Hon'ble Supreme Court in the said ruling in para No.7, it is held that even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. As far as case in hand before this court is concerned if there would have been an independent and separate property of J.D. No.1 without any co-sharer with him, then in that case, portion to the extent of satisfaction of decree out of independent property of J.D. No.1 could have been sold, but properties which stands in the name of J.D. No.1 are common with other co-sharers and there is no division of properties by metes and bounds between co-sharers in which J.D. No.1 is one of the co-sharer, there is also possibility of breach of provision of Bombay Prevention of Fragmentation and Consolidation Act therefore, the facts of the case in this ruling and facts of the case in hand before the court are different, therefore, this ruling is not applicable to the case in hand before this court.

3. Furthermore the Hon'ble Bombay High Court in case of D. Madhukar Trimbak Gore Vs. Vasant Ramkrishna Kolhatkar reported in AIR 1983 Bombay 277, in this ruling in para 19 it is held that executing court has to do proper enquiry and determine the

question with regard to the identity of the property which has to be delivered to concerned person. Therefore, as above mentioned the specific portion of the J.D.No.1 in the above mentioned properties can not be identified due to that, there is no partition by metes and bounds between co-sharers in those properties. Therefore, this court can not deliver the specific portion of property out of those lands to purchaser, therefore, share of J.D. No.1 in the properties mentioned in Exh.61 is not possible to sale for the execution of the decree in favour of D.H.

4. In view of above reasons and discussion, I proceed to pass following order -

ORDER.

- 1 The share of J.D. No.1 in the property mentioned in Exh. 61 will not be sold for satisfaction of the decree in favour of decree holder.

Sangli
Date:-24/06/2021.

Sd/xx
(L. D. Huli)
Civil Judge Senior Division,
Sangli.

CERTIFICATE

I affirm that, the contents of this P.D.F. file are same,
word to word as per the original order.

Name of Stenographer : G.S.Parve
Court : Civil Judge Sr.Dn., Sangli
Date : 24/06/2021
Order signed by the Presiding : 24/06/2021
Officer on
Order uploaded on : 25/06/2021