



Order below Exh.1 in Decree Final No.1/2022

Shalini & Ors V/s.Vitthal & Others.
(CNR NO.MHSN070009262022)

Present application is filed for sending decree to the Collector, Sangli for effecting partition as per Section 54 of the Code of Civil Procedure, 1908.

2. Notices have not issued yet to non-applicants. The learned Advocate for applicants submitted that for the purpose of execution of decree it be sent immediately to the Learned Collector, Sangli.

3. Perused the application and decree. Along with this application, the applicants have filed pursis vide Exh.20, and thereby submitted that no appeal or revision has been filed against the decree passed in RCS No. 3/2013. The Ld. Advocate for applicants submitted that there is no stay to the decree passed in RCS No. 3/2013.

4. Present application is filed for partition of suit properties which comprises agricultural land and house property. The properties under the decree are agricultural land assessed to the payment of revenue to the Government. Till today, the decree has not been sent to the Collector, Sangli for effecting partition as per section 54 of the CPC. At this stage, it is necessary to refer the judgment of the Hon'ble Bombay High Court in the case of **Annasaheb Rajaram Nagane Vs. Rajaram Maruti Nagane & Ors. reported in AIR 2001 Bom. 303.** In this case, the Hon'ble Court has held that :-

“It is not necessary for the applicants/ decree holder to move or make any application to the Court to send the decree to the

Collector. It was duty of the Court to sent necessary papers to the collector as per the directions given in the decree itself. An application even if made in the form of darkhast application with a prayer to send decree and papers to the Collector, was not an application in execution.”

5. Furthermore, the Hon'ble High Court has given general directions to the all Civil Courts which are as follows :-

“All the Civil Courts are directed to remit, to the Collector, within four months from the date of signing the decree under section 54 of CPC, all the relevant papers for partition of property or a separate possession of undivided estate assessed to the payment of revenue to the Government, without there being any application of request or prayed for the same; so as to follow the mandate of Section 54 of CPC.

Any application seeking direction to send necessary papers to the Collector, should be disposed of within 30 days from the receipt thereof, treating it as an application filed in the disposed suit, without opening any independent proceeding in this behalf. Such application should be treated as a request to a Judge or Court to send necessary papers to the Collector for effecting partition under Section 54 of CPC. Such application is really nothing but a request to the Judge or Court to discharge his ministerial duty. In view of this, even no notice to any of the parties to the application is necessary as it is not a petition seeking any adjudication of any of the rights of the parties”.

6. In this judgment the Hon'ble parent High Court has held that all the relevant papers for partition of property or a separate possession of undivided estate assessed to the payment of revenue to the Government, shall be sent immediately to the Collector without there being any application of request or prayer for the same; so as to follow the mandate of Section 54 of CPC. As stated above, suit properties are agricultural land assessed to the payment of revenue to the Government. As stated by the Hon'ble parent High Court in above judgment that no notice to any of the parties to the application is necessary as it is not a petition seeking any adjudication of any of the rights of the parties. In view of above directions of the Hon'ble Parent

High Court, all relevant papers along with decree be sent immediately to the Collector, Sangli as per Section 54 of CPC. The applicants have filed pursis vide Exh. 20, and thereby has submitted that there is no stay by the Hon'ble Appellate Court to the impugned decree. Taking into consideration the statement of applicants, it is necessary to pass order to give effect to the decree passed in R.C.S. No.3/2013. In view of above reasons, I pass the following order.

::ORDER::

1. All relevant papers immediately be sent to the Learned Collector, Sangli as per Section 54 of the Code of Civil Procedure, 1908 for effecting partition of suit properties as mentioned in judgment and decree passed in RCS No.3/2013.
2. No order as to costs.
3. Applicants to take further stage for effecting partition of house suit properties.

Date : 27-2-2023

Kavathe-Mahankal.

(A.R.Vyawahare)
Civil Judge, Junior Division,
Kavathe-Mahankal

Certificate

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

Name of the Stenographer - H.P.Haridas

Court - CJJD and JMFC, Kavathemahankal.

Date -27.2.2023

Order signed by the

Presiding Officer on -27.2.2023

Order uploaded on -01.3.2023