

ORDER BELOW EXH. 37 IN FINAL DECREE NO.01/2022**Bhagwan Vs. Vitthal & Ors.**

CNRNOMHSN070009262022

This application has been filed by Opponent No. 2, seeking the recall of the preliminary decree sent to the Collector in R.C.S. No. 03/2013.

02. The applicant submits that the Hon'ble Apex Court has ruled that a daughter is also a coparcener, alongside a son, and is entitled to an equal share, even if the final decree proceedings are pending. It is further submitted that one Bapu Santu Mane, the common ancestor, was survived by two daughters, Parvati and Dhondubai. In the preliminary decree, their shares were allocated based on a notional partition rather than recognizing them as coparceners. Therefore, the preliminary decree needs to be amended to allocate equal shares to the daughters.

03. The applicant further contends that the preliminary decree has already been sent to the Collector, Sangli, for the preparation of the final decree. However, it has not been amended in accordance with the law laid down by the Hon'ble Apex Court. A final decree can only be passed after the preliminary decree has been properly amended. Hence, the applicant prays for the recall of the preliminary decree until it is amended appropriately.

04. The decree holders opposed this application by submitting their reply through Exhibit 38. They argued that the application is not maintainable. They asserted that final decree proceedings related to agricultural land can only be conducted before the Collector, while the current proceedings pertain solely to house properties. Additionally, they contended that the present application is not maintainable under Section 54 of the Code of Civil Procedure, 1908. It was further stated that both daughters are deceased, and therefore, the preliminary decree cannot be

amended concerning the deceased daughters.

05. They further argued that once the preliminary decree is forwarded to the Collector, this court becomes *functus officio*. Consequently, the court lacks the authority to recall or modify the preliminary decree. It is also asserted that Dondubai passed away on 15-10-2021. Prima facie, the will deed appears to be false and fraudulent. Therefore, the opponent, Pandurang, has no right to claim her share based on a fraudulent will deed. Furthermore, he has no standing to file this application. In light of the above reasons, the original applicant prays for the rejection of the application.

06. Perused the application and reply. Heard arguments of both parties. According to the present applicant, Bapu Santu Mane was the common ancestor, survived by two daughters, Parvati and Dhondubai. In the preliminary decree, shares were allocated to them based on a notional partition rather than as coparceners. Therefore, the applicant contends that the preliminary decree should be amended to grant equal shares to the daughters. The Learned Advocate for the Decree Holder (D.H) argued that this court lacks the authority to recall the preliminary decree. Additionally, the court cannot amend the preliminary decree once it has been forwarded to the appropriate authority for the preparation of the final decree. The advocate further contended that the present applicant cannot claim the share of the deceased Dhondubai based on an alleged false will. Accordingly, he prayed for the rejection of the present application.

07. Undoubtedly, one Bapu Santu Mane was the common ancestor, survived by two daughters, Parvati and Dhondubai. In the preliminary decree, shares were allocated to them based on a notional partition rather than as coparceners. The Hon'ble Supreme Court, in the case of *Vineeta Sharma vs. Rakesh Sharma* (AIR 2020 SC 3717), held that

daughters are also coparceners and possess equal rights alongside sons. Moreover, a daughter retains her right in ancestral property until the final decree is passed.

08. In the present case, the preliminary decree has been sent to the Learned Collector for the issuance of the final decree, which has not yet been passed. This decree pertains to a partition suit, and it is a well-established principle that there can be multiple preliminary decrees in such cases. In light of the law established by the Hon'ble Supreme Court in *Vineeta Sharma*, it is necessary to reassess the preliminary decree to ensure that the daughters have been granted their rightful shares. Additionally, Dhondubai has passed away, and her legal representatives have not been brought on record. This could potentially alter the shares of the parties due to her death. Under these circumstances, the proceedings for the final decree should be recalled until all objections regarding the preliminary decree are resolved.

08. The Decree Holder (D.H) has raised an objection regarding the alleged will deed executed in favor of the present applicant. However, I believe that this is not the appropriate stage to make a determination on such objections. The legality of the said will deed will be addressed at the proper stage. At this point, the primary question is whether the preliminary decree should be recalled. All objections concerning the amendment of the decree will be considered later, but certainly not at this stage.

09. According to the D.H, this court has become functus officio. However, the learned advocate for the applicant has relied on the judgment of the Hon'ble High Court of Judicature at Bombay in *Mahadu @ Mahadev Baji Bhosale vs. Appaji Gunbarao @ Ganpatrao Bhosale*, 2003 (2) Mh.LJ 216. It was held in that case that, during the execution of a partition decree, the court does not become functus officio after

sending the decree for partition. This principle of law is applicable to the present case. The Civil Court is empowered to ensure that the partition is carried out in accordance with the decree. In this case, consideration of the amendment to the preliminary decree is required due to the fluctuation of shares.

10. In light of the above discussion, I conclude that the preliminary decree should be recalled from the Collector until the question of amending the preliminary decree is resolved. Therefore, this application is allowed. Consequently, I pass the following order-

:: O R D E R ::

1. Application at Exh.38 is allowed .
2. Preliminary decree passed in R.C.S No.03 of 2013 be recalled from the Collector, Sangli forthwith.
3. No order as to costs.

Date:-21.01.2025.

Kavathe-Mahankal,

(A.R.Vyawahare)

Civil Judge, Junior Division,

Kavathe-Mahankal.

Certificate

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

Name of the Stenographer - H.PHaridas

Court - CJJD and JMFC, Kavathemahankal.

Date - 21.1.2025

Order signed by the

Presiding Officer on -21.1.2025

Order uploaded on -23.1.2025