

ORDER BELOW EXH. 38 IN RCS 02/2013
(Sampatabai Vs. Mhalappa & ors.)
(Passed On 04/12/2024)

The instant application is filed for issuing possession warrant as per allocation chart prepared and has been approved by Tahasildar Jath and Tahasildar Mangalveda as per direction of Hon'ble Collector, Sangli and Solapur respectively. It is the contention of applicant that the allocation chart has been approved by Hon'ble Collector Sangli and Solapur as per preliminary decree and order of Special Civil Suit No. 190/2008 dated 23/12/2010. It is the contention of applicant/D.H that the precept under Section 54 of the Code of Civil Procedure have been forwarded to Hon'ble District Collector, Sangli and District Collector, Solapur prior to 8 to 9 years for effecting partition.

2 It is further contention of the applicant/D.H that as per order of Hon'ble District Collector, Sangli, the Tahasildar Jath has prepared allocation table and Hon'ble District Collector, Solapur has also directed Tahasildar Mangalveda for preparing allocation table as per preliminary decree. Tahasildar Jath and Tahasildar Mangalveda have already passed allocation table (वाटप तक्ता) as per preliminary decree passed in Special Civil Suit No. 190/2008.

3 Applicant/D.H further submitted that the preliminary decree in Special Civil Suit No. 190/2008 has been passed by Hon'ble Civil Judge Sr. Division, Sangli and it's execution has been delayed due to Misc. Civil Application No. 04/2019.

Therefore, even after approval of allocation chart as per preliminary decree, possession of applicants declared share in the suit property yet to be received. JD had filed stay application vide Exh. 30 in order to deprive the Decree Holder for getting possession of her allotted share in the suit property as per allotment chart has been rejected by the Court on merit. Thus, D.H has prayed for issuing possession warrant to Tahasildar Jath through Hon'ble Collector Sangli and to Tahasildar Mangalveda through Hon'ble Collector Solapur.

4 JD have filed their reply vide Exh. 44 and objected the application. They submitted that their application for setting aside ex-parte decree passed in Special Civil Suit No. 190/2008 is pending before this Court bearing Misc. Civil application No. 4/2019. JD No. 1 had sold some properties for his operation through sale deed and same is binding on JD No. 2 to 4 and applicant also. Applicant has not made party to her daughter namely Pooja Ravsaheb Padolkar and daughter of JD No. 1 namely Laxmibai Dadaso Marugade in the suit.

5 Read the application and say. Heard Learned advocates of both parties. Learned advocate for the applicant/D.H has submitted that JD have deliberately avoiding the execution of decree and delaying the matter by filing several meritless applications in the matter. Learned advocate for the JD has submitted that, the D.H has obtained preliminary decree

fraudulently and not dis-close the fact that there are other co-sharer to whom the D.H had not made party in the suit. Actually, defendant No. 1/JD has a daughter namely Laxmibai and D.H is having daughter to whom she has not made party in the suit. So also, JD No. 1 has sold some property through registered sale deed for legal necessity. Thus, he lastly submitted that execution of preliminary decree is not possible as the two co-sharer is having interest in the suit property to whom the D.H has not made party in the suit. Hence, he prayed for rejection of application.

6 At the outset, it is mentioned here that, ex-parte preliminary decree in Special Civil Suit No. 190/2008 has been passed on 23/12/2010 by Hon'ble Civil Judge Sr. Division, Sangli. Application for final decree has been filed on 17/01/2013. Precept under Section 54 of the Code of Civil Procedure have been forwarded to Hon'ble District Sangli and Solapur respectively long back. As per preliminary decree Tahasildar Jath and Tahasildar Mangalveda has prepared and approved allocation chart on the directions of Hon'ble District Collector Sangli and Solapur respectively. Matter is only pending to the extent of handing over possession of allocated share of D.H as per preliminary decree.

7 The main objection of JD to this application is that, they are denying possession of allocated share of applicant/D.H on the

ground that D.H has not made party to the daughter of JD No. 1 namely Laxmibai and D.H's daughter Pooja. In this respect it is submitted that, neither daughter of JD No. 1 Laxmibai nor daughter of D.H Pooja have been appeared and objected the application till today. So also, application Exh. 30 for stay of final decree application has been rejected by this Court. The ground raised for staying execution of final decree by the JD has already been decided by this Court at the time of order on Exh. 30. So also, in view of preliminary decree precept under Section 54 of Code of Civil Procedure have been already forwarded to respective authorities long back. Hence, I pass following order,

Order

1. Application is allowed.
2. Issue possession warrant to Tahasildar Jath and Tahasildar Mangalveda through Hon'ble District Collector, Sangli and Solapur respectively for handing over possession to the decree holder as per allocation chart approved in view of preliminary decree of Special Civil Suit No. 190/2008 dated 23/12/2010.
3. No order as to costs.

Place :- Jath

Date :- 04/12/2024

Time :- 11.30 am

(Prakash C. Bachhale)
Civil Judge Junior Division,
Jath