

Order below exh.40

(R.D.NO. 26/2007)

This application is filed by the legal heirs of deceased J.D.NO. 1 for setting aside no say order passed against them on 18-08-2009.

The applicant J.D.state that the final decree in R.C.S.NO. 185/1981 has been set for execution by the decree holder. Against the decree in R.C.S.NO. 185/1981 various appeals, revision were filed. Review petition no. 226/13 has also been filed before the Hon'ble Bombay High Court. It is stated that, after receipt of the notice under rule 20 of order 21 of the Code of Civil Procedure they upto have filed their say. However, inadvertently they could not file their say to the execution petition. It is further stated that, an advocate had carried out work of commission before the final decree wrong measurements have been taken by him. Therefore for equitable partition the applicants J.D.pray for setting aside of no say order and for permission to file their say.

The application is registered strongly by the D.H.on the ground that the same is the illegal and incorrect. It is further stated that, the application is barred by provisions of Sec.11, explanation 7 of the Code of Civil Procedure. The application is not within reasonable time. Therefore the D.H.prays for rejection of the application.

Heard for both the sides in length.

I have gone through the entire record. It would here that preliminary decree R.C.S.NO. 185/1981 was passed in the year 1984. Thereafter the decree holder applied for final decree by way of F.D. Appln. No.1/1994. The commission was appointed for the purpose of partition of house property bearing nos. 956, 965, 1423, 1424, 1425, 1426 situated within the limits of Karmala Municipal Council. Commission filed his

report. On the basis of the report final decree was prepared directing the J.D.to handover possession of the portion mentioned in the report of commission to the decree holder within 2 months.

Thereafter this execution petition has been filed in the year 2007. Notice were issued to all the J.Ds. J.D.No. 1-A to 1-D have been served with notice. They appeared on 15-03-2008. They failed to file say though just opportunity was given to them. Therefore the execution was ordered to proceed without their say.

The matter remain pending for service of notice for the rest of the J.D. After service of notice to the remaining J.Ds, the D.H. filed the application for issuance of possession warrant at exh.31. The J.Ds.were called upon to file their say. Immediately on the next day JD nos.1-A to 1-D

Date : 05th February, 2013.

(S.V.Jadhav)
C.J.J.D., Karmala