

Order Below Exh.63 in R.D.No.155/2011

[CNR No. MHST-05-000721-2011]

1. Present application is filed by J.D. with the prayer for granting interim injunction to the order passed by Tahasildar, Karad of finalizing the “ वाटप तक्ता ” whereby the landed portions which have to be put into the possession of the parties as per the shares declared by preliminary decree have been finalized. It is also prayed by the J.D. that the proceeding of effecting the final decree in respect of landed properties be transferred to some other authorities. As per the contents of the application the concerned revenue officers in collusion with D.H. have finalized the said “ वाटप तक्ता ”. Even, on 02/07/2016 as per earlier finalized “ वाटप तक्ता ” the proceeding was kept for delivering the possession of landed properties without giving notice to the present J.D. but in that regard J.D. approach to this court and on 01/07/2016 this court directed the revenue authorities to consider the objections of present J.D. and to reformulate the “ वाटप तक्ता ”. In accordance with order of this court the present J.D. submitted his objections before the Tahasildar, Karad and even argued through his advocate but all in vein because the Tahasildar, Karad not considered the objections of present J.D. and confirmed the earlier “ वाटप तक्ता ”. Therefore, the present J.D. is under apprehension that on the basis of said finalized “ वाटप तक्ता ” possession may be delivered to D.H. and in that circumstances J.D. would be put to

irreparable loss. Accordingly, J.D. prayed allowing the present application.

2. D.H. objected the application on the ground that the application itself is not tenable under the law. As per D.H. the prayer of transfer of execution proceeding of the J.D. is not tenable before this court. As per D.H. only revenue authorities have jurisdiction to decide the objections in respect of partition of agriculture land. Accordingly, D.H. prayed for rejection of application.

3. Perused the application and say. Perused the record. Perused the documents file. Heard the argument of D.H. Despite sufficient opportunity J.D. not argued.

4. Following points arises for my determination. I record my findings thereon for the reasons to follow.

Sr. No.	Points for determination	Findings
1	Whether the prayer of J.D. for interim injunction is liable to be allowed ?	No
2	Whether the prayer of J.D. for transfer of execution proceeding in respect of agriculture land is liable to be allowed ?	No
3	What order ?	As per final order

As to the point no.1 :-

5. From the record it reveals that the present execution proceeding is in respect of decree passed in Regular Civil Appeal No.

100/2006 whereby a preliminary decree in respect of agriculture land and house property was passed by declaring shares of the parties. Accordingly, by passing order below Exh. 26 the partition papers were sent to Collector for effecting partition of agricultural land. The record further shows that at Exh. 47 on 30/06/2016 the J.D. filed similar application as present one thereby made grievance about the partition effected by Tahasildar, Karad without considering the objections raised by him. As per order passed by my learned predecessor at Exh. 47 it was directed to stay further proceeding in execution till the objections of present J.D. are decided. Again, from record it appears that at Exh. 50 J.D. filed application under Section 47 of the C.P.C. and on the said application my learned predecessor passed order and thereby directed Tahasildar, Karad to hear and consider the objections of J.D. and then to proceed with the execution of decree. Now, alongwith present application J.D. has filed on record with list Exh.66 the xerox copy of order passed by Tahasildar, Karad in partition execution proceeding no. 115/2011 dt. 31/03/2018. Now, as per J.D. the present order of Tahasildar, Karad is passed without considering the objections of J.D. and without following the directions and order passed by this court of giving opportunity to the J.D. and considering the objections of the J.D. The decision of Tahasildar, Karad goes to show that, as no objections were taken by any of the parties within the time limit and further as no objections were raised at first instance therefore, he has confirmed the earlier “ वाटप तक्ता ” dt. 16/04/2016.

6. In this regard I would like to rely on the ruling of Hon'ble Bombay High Court in case of **Prakash Nathyaba Bhosale Vs Laxman**

Ganaba Bhosle where in it has been held that the executing court could not entertain any objection u/s 47 or under any other provisions of C.P.C. or even under section 151 of C.P.C. in relation to partition of agricultural landed properties by the Collector even though, said partition would may be contrary to the terms of decree. The only thing by which a civil court could control in a limited manner the revenue authorities in the matter of execution of partition in respect of agricultural land is by way of exercising jurisdiction and thereby giving directions in a separate and independent civil suit that may be brought by aggrieved party. Therefore, it becomes clear that, the executing court could not interfere in the matter of partition of the landed properties by the revenue authorities. No doubt, the civil court has limited role and scope to keep a watch of the said process of partitions by the revenue authorities and even to control the said revenue authorities in a proper manner for the purpose of effecting the execution as per the mandate of the decree. However, even for doing so the civil court gets the jurisdiction in an independent separate civil suit and not in the pending execution proceeding. Even, the party aggrieved by any proceeding of revenue authority for effecting partition of agricultural land has also having remedy of appeal under Maharashtra Land Revenue Code to the appellate revenue authorities. Accordingly, I record my finding to the point no. 1 in negative.

As to the point no. 2 :-

7. The prayer of the present J.D. of transferring the execution proceeding in respect of agricultural land from one revenue authority to other revenue authority is outside the jurisdiction of this court. Therefore,

I record my finding to the point no. 2 in negative and as answer to the point no. 3 I pass the following order.

Order

1. The application is rejected.
2. The J.D. shall bear cost of present application.

Date:- 15-07-2019

Place:- Karad.

(A. P. Kulkarni.)
3rd Jt. Civil Judge Sr. Division
Karad.