

MHST160006292024

**Order Below Exh.49 in R.D. No.14/2024****(Venkat Raghuram Jedhe Deceased Thr.
Lrs. Vs.Raghunath Raghuram Jedhe Deceased
Thr. Lrs.)**

This is an application filed by Decree holder that not to proceed exh.5 against judgment debtor nos.10 and 12 to 23. Decree holder submitted that present execution petition is filed for partition by metes and bounds. Till today there is no partition of suit properties between decree holder and judgment debtors.

2. According to decree holder he gave an application at exh.5 to add judgment debtor nos.10 to 23 as proposed Judgment debtors. Proposed J.D No.11 has tried to construct over the suit property. But partition did not take place by metes and bounds. In this execution petition J.D. No.11 is appeared and gave his say. It is prayed by decree holder that he proceed the matter only against J.D. No.11. He does not want to proceed the matter against J.D. Nos.10 and 12 to 23. Hence he filed this application.

3. Per contra third party Deelip Gole has filed his say at exh.50. He contended that in this execution petition the decree holder is wrongly mentioned as D.H. The prayer of decree holder is wrong and illegal. There is no cause of action against him. Decree holder did not mention the provision of C.P.C. under which this application is given. This court has passed order below exh.5 and issue notice to proposed J.Ds. The decree holder must be not press application at exh.5. There is no provision for amendment in the application given in The Code of Civil Procedure.

4. According to judgment debtor no.11 it is not specified what mentioned at exh.5. It is intention of decree holder that to give application at exh.5, take order on same, then given an application not to proceed against J.D. Nos.10 and 12 to 23 and again by new application to add proposed J.D. nos.10 and 12 to 23. Decree holder prolong the matter by giving said application. Decree holder can not amend the prayer of exh.5. Hence the application at exh.49 deserves to be rejected with cost.

5. Following points arise for my determination. I have recorded my findings thereon for the reasons to be discussed hereinafter.

Sr.No.	Points		Findings
1.	Whether Decree holder is entitled for relief as prayed?	...	No.
2.	What order?	...	As per final order.

REASONS

POINT NOS.1 AND 2:-

6. I heard learned advocates of both parties. Perused the record of the case. Perused documents submitted by decree holder.

7. It is seen that my learned predecessor has passed order below exh.5 “issue notice to proposed Judgment Debtors”. Similarly it is the contention of Decree holder in exh.5 that Raghunath and Venkat also their heirs transferred the suit property by sale deed. J.D. Nos.10 to 23 are subsequent purchasers. Hence they are necessary parties for passing effective decree. Without J.D. Nos.10 to 23 no effective order can be passed. Hence it would not proper to proceed exh.5 against judgment debtor nos.10 and 12 to 23.

8. Considering above discussion, I answer point no.1 is in negative. For answer point no.2, I pass following order:

ORDER

1. The application is rejected.
2. Cost in cause.

Date:22.10.2024

Place: Wai

(S. S. Palsule)

3rd Jt. Civil Judge Jr. Dn. Wai.