

MHST160017132022



R.D. No. 24/2022
Raghunath Vs. Laxman & Ors.

Order Below Exh.27
(Passed on 22th March, 2024)

This is an application filed by the plaintiff / Decree Holder for appointment of Court Commissioner for effecting partition of the house properties. They submitted that as per the judgment in R.C.S.No.69/2003, the partition has to be effected in respect of the field and house properties.

2. Say of the judgment debtors was called. Accordingly, the judgment debtor No.2A and 2B filed their say and submitted that as per Section 54 of the Civil Procedure Code, precept be sent to the Collector for effecting partition of the landed properties, as well as the Court Commissioner be appointed for effecting partition of the house properties. Further, they submitted that the decree holder No.1A is suffering from cancer and therefore, the matter be decided as expeditiously as possible.

3. Perused the record. Heard Learned Advocate Mr. R.R.Yadav for the decree holder as well as Learned Advocate Mr. S.D.Khamkar for the judgment debtors. The perusal of record shows that defendant No.1 & 2 both are dead. Accordingly, their legal representatives have been brought on record. The judgment debtor No.1B and 1C failed to appear in the matter. Hence, it is being proceeded ex-parte against them. The judgment debtor No.1A appeared and filed his say at Exh.21 and

submitted that as per the decree, he is in possession of the share of Laxman Kashinath Dagade and therefore, Sagar Raghunath Jadhav is in possession of the share of Raghunath Kashinath Jadhav.

4. The report from the concerned Assistant Superintendent has also been called. Accordingly, she filed it and submitted that there is no appeal or stay to the execution of decree in R.C.S.No.69/2003. It is well settled principle of law that the precept is required to be sent to the Collector for effecting partition of the landed properties as per the provision under Section 54 of the Civil Procedure Code.

5. The procedure for appointing commission for effecting partition of the house properties is contained in Order 26 Rule 13 to 15 of the Civil Procedure Code, which provides that a commission has to be issued to such person to make partition or separation according to the rights as declared in the decree. In view of this legal position and having account to the facts and circumstances, the present application deserves to be allowed. Hence, I pass following order.

ORDER

1. The application (Exh. 27) is hereby allowed.
2. Issue precept to the Collector Satara under Section 54 of the Civil Procedure Code for effecting partition of the landed field properties.
3. Advocate Shri. S.C.Khadsare is hereby appointed as the Court Commissioner to make partition of the suit house properties as per the decree in R.C.S.No.69/2003.
4. The Decree Holder to supply all the necessary documents so as to facilitate the sending of precept to the Collector Satara and the Court Commissioner Shri. Khadsare.

5. The Court Commissioner shall issue notices to the all concerned parties in advance, informing them the exact date of commission and its nature.
6. The Decree Holder shall pay the commissioner fees of Rs. 2,500/- (Rupees Two Thousand Five Hundred Only) and deposit it in the Court.
7. On compliance as above, writ be issued.
8. The Court Commissioner is hereby directed to carry out the work of commission within one month from the date of issuance of writ and shall file his detailed report alongwith map prepared by him to show the exact portion to be given in the share of every concerned parties.

(Dictated and Pronounced in open Court.)

Date : 22.03.2024

(R.M. Bhende)
2nd Jt. Civil Judge Jr. Dn. Wai.,