

MHTH170028572022

Regular Darkhast No.15/2022
Adi and Ors. Vs. Mehra and Ors.
ORDER BELOW EXH.14

This is an application filed by Judgment debtor No.9/1 to 9/3 for sending decree to the Collector for effecting partition.

2. It is submitted that R.C.S. No.58/2012 was decreed vide Judgment and Order dated 23/08/2014 as regards partition of the suit property. Suit property includes immovable property. But precept yet to be sent to the Collector for effecting partition. This execution proceeding is not stayed by the order of superior Court. Accordingly, they prayed for sending decree for effecting partition by the Collector as per the Judgment and Decree in said suit and prayed for allowing this application.

3. Decree holder given no objection to allow this application.

4. Heard both sides. Perused application, say and record.

5. Judgment Debtor No.9/3 has filed his affidavit at list Exh.18 and stated that R.C.S. No.58/2012 was decreed vide order dated 23/08/2014. It is also stated that Civil M. A. No.52/2012 was filed by the judgment debtor Ratan Jhahangir Kooper for condonation of delay for filing appeal against the said judgment. The said application was rejected by the Hon'ble District Court, Palghar vide order dated 03/03/2018. Now, Civil M. A. No.21/2018 is pending before the Hon'ble District Court, Palghar, to set aside the said order dated 03/03/2018. But there is no stay to this proceeding as notices yet to be received by the parties.

6. On perusal of record it shows that the present execution proceeding is filed by the Decree holders for execution of the judgment and decree passed in R.C.S. 58/2012 (Old No.Spl. C.S. No.234/1988). The said suit was filed for partition and for other reliefs and it was decreed. Partition of the agricultural land and houses are involved in the present matter. Judgment debtor No.9/1 to 9/3 prayed for sending decree to the collector for partition of the agricultural lands. This Court made query that Whether this Court can send precept for effecting partition as prayed, without hearing other judgment debtors. Learned Counsel for judgment debtor No.9/1 to 9/3 relied upon the ratio laid down by the Hon'ble High Court in the case of Devidas Laxman Navale

Vs. Tahsildar Sangamner and Ors. AIR Online 2021 BOM 1870 and in the case of Annasaheb Rajaram Nagane and Anr. Vs. Rajaram Maruti Nagane and Ors. AIR 2001 BOM 303.

7. It is matter of record that some of the judgment debtors yet to be served by the notice. But considering the ratio laid down by the Hon'ble High Court in the cited cases, in my view, the present application can be allowed in respect of initiation of proceeding for effecting partition of the agricultural lands except delivery of possession as per the shares. Because it was held in the said cases that there is no need to file execution proceeding for effecting partition and Court can send decree to the collector for partition on its own accord. Considering ratio, it is very applicable in the present situation in the case in hand. Moreover, decree holders have given no objection for the same. There is no stay to the present execution proceeding. In this situation, I proceed to pass following order.

ORDER

1. Application Exh.14 is allowed.
2. Copy of the Judgment and Decree be sent to the Collector, Palghar for effecting partition of suit lands vide section 54 of the Code of Civil Procedure.
3. Collector, Palghar is directed to commence all procedure for effecting partition and to continue the same except delivery of the possession of the respective shares. Further order will be passed for the delivery of the possession.

Date : 09/05/2025

Place : Palghar.

(Satish Y. Kadam)

2nd Joint Civil Judge, Senior Division,
Palghar.