

Order below Exh.7 in RCA No.66/2020

Vinayak Ramrao Deshkar Thr. LRs & Ors ..Vs.. Sanjay Deshkar & others
CNR No. MHWR010012552020

1. The application has been filed with a prayer to stay the execution and operation of the decree passed by 5th Civil Judge, Junior Division, Wardha on 29/07/2020 in Regular Civil Suit No.73/2013.
2. Heard the learned counsel for the appellants Shri. V. T. Gurnule. The respondent No.1 Sanjay Deshkar filed say vide Exh.63.
3. On 03/02/2025, the common order below Exh.1 in RCA No.65/2020 and RCA No.66/2020 has been passed and parties were directed to submit the family tree on affidavit by disclosing the names of all legal heirs of common ancestor. Accordingly, the appellants disclosed the names of legal heirs of Late. Ramraoji Deshkar vide Exh.66.
4. The appellants also filed application below Exh.67 for addition of necessary parties, who were not made as parties in the suit before the learned Trial Court. The respondent No.1 Sanjay Deshkar filed a pursis below Exh.68 by which it is submitted that there is no objection to add the additional parties.
5. The suit before the learned Trial Court is for the relief of partition with other consequential reliefs. It prima-facie appears from the family tree that some of the legal heirs of Ramraoji Deshkar were not added as a party in the suit before the learned Trial Court. On today itself, the order for issuing notices to the propose parties calling their say on the application for addition of parties has been passed.
6. The learned counsel Shri. V. T. Gurnule appearing for the

appellants pressed the application below Exh.7 and submitted that the Revenue Authorities are going to execute the decree. He submitted that the documents enlisted in the list of document vide Exh.70 shows that Revenue Authorities are going to execute the decree.

7. The suit for a partition is having peculiar nature and in my view if the some of the legal heirs have not been added as parties in the suit decree cannot be executed effectively and there would be complications for the effective execution of the decree. The respondent No.1 Sanjay Deshkar, who was the sole plaintiff before the learned Trial Court also submitted pursis thereby giving no objection for the addition of parties.

8. It is needless to say that the plaintiff should not be kept away from the fruits of the decree passed by the learned Trial Court and appeal should be heard as earliest. However, looking to the situation that prima-facie it appears that some of the legal heirs of principal ancestor Shri. Ramrao Deshkar are not made as parties, they should be called upon to hear their side as the suit before the learned Trial Court was for relief of partition and the appeal is out of the decree passed in the suit.

9. In my view, before deciding the application below Exh.7 on its own merits, it would be proper to call upon the proposed parties, therefore, the order to issue notices to propose parties has already been passed on today itself.

10. The suit before the learned Trial Court had been filed in the year 2013 and more than 11 years have been passed. Some of the parties have not filed the say on the application below Exh.7. The highly contesting party Shri. Sanjay Deshkar strongly opposed the

application by filing say. The respondent No.1 Sanjay Deshkar present before the Court and filed pursis below Exh.72. It is submitted by the respondent No.1 that the say filed by him be treated as argument on Exh.7.

11. As the order to issue notices to the proposed parties has been passed, in my view it would be proper to decide the application below Exh.7 after hearing to those parties also as the suit was for the relief of partition.

12. Considering the age of the matter, it would not be proper to stay the execution proceeding for a long period. To avoid the complications in the future, but at the same time to expedite the matter, it would be proper to stay the execution only for a particular period. Therefore, I pass the following order.

Order

- 1] The execution and operation of the decree passed in Regular Civil Suit No.73/2013 on 29/07/2020 by learned Court of 5th Jt. Civil Judge, Junior Division, Wardha is hereby stayed till the next date i.e. 26/03/2025.
- 2] The application below Exh.7 would be decided on its own merits after hearing all the parties including the proposed parties.
- 3] The appellants are directed to take the effective steps for service to propose parties, failure of which proper order would be passed.
- 4] The appeal is expedited.
- 5] Inform the learned Trial Court accordingly.

Date : 12/03/2025

(J. A. Pedgaonkar)
District Judge-5, Wardha.