



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3613 OF 2013

PETITIONER : Mohammad Akil s/o Mohammad Suleman, aged about 41 Years, R/o Yavatmal.

..VERSUS..

RESPONDENT : Smt. Rehana Khanam w/o Abdul Mutalib Khatib, aged About 51 years, R/o Yavatmal.

Lr's of respondent are brought on record as per this Hon'ble Court's order dt. 07.01.2023

1-a Taukir Khatib s/o Mutallib Khatib, aged about 40 years, occ. Business, resident of Sharma Layout; Yavatmal, Tah. & Distt: Yavatmal

1-b Samir Khatib s/o Mutallib Khatib, aged about 40 years, occ. Business, resident of Sharma Layout; Yavtmal, Tah. & Distt: Yavatmal

WITH

CIVIL REVISION APPLICATION NO.15 OF 2012

APPLICANT : Mohammad Akil s/o Mohammad Suleman, aged about 40 Years, R/o Yavatmal Islampura, Kalam Chowk, Yavatmal, Distt. Yavatmal.

..VERSUS..

RESPONDENT : Smt. Rehana Khanam w/o Abdul Mutalib Khatib, aged About 50 years, R/o Yavatmal Islampura, Kalam Chowk, Yavatmal, Distt. Yavatmal.

Amendment as per
Court's order dt.
09.06.23

1-a Taukir Khatib s/o Mutallib Khatib, aged about 40 years, occ. Business, resident of Sharma Layout; Yavatmal, Tah. & Distt: Yavatmal

1-b Samir Khatib s/o Mutallib Khatib, aged about 40 years, occ. Business, resident of Sharma Layout; Yavtmal, Tah. & Distt: Yavatmal

WRIT PETITION NO.3613 OF 2013.

Mr. Masood Shareef, Advocate for Petitioner.

Mr. S. Raisuddin a/w. Syed Sufiya, Advocate for the Respondents.

CIVIL REVISION APPLICATION NO.15 OF 2012

Mr. Masood Shareef, Advocate for applicant.

Mr. S. Raisuddin a/w. Syed Sufiya, Advocate for the Respondents.

CORAM : ROHIT W. JOSHI, J.

DATE : 04.05.2026

J U D G M E N T :

1) Heard finally with consent of learned advocates for the respective parties.

2) The present petition takes exception to order dated 25.06.2013 passed by the learned Joint Civil Judge, Junior Division, Yavatmal on applications at Exhibits 149 and 155 in Regular Darkhast No.36 of 1990. Application at Exhibit 149 is filed by the present respondent for passing a final decree in terms of a preliminary decree for partition and separate possession. Application at Exhibit 155 was filed by the present petitioner for

dismissal of the execution proceedings.

3) It is not in dispute that initially a suit for partition and separate possession was filed by one, Sayyad Ahmadali s/o. Mohammad Mazharali, being Regular Civil Suit No.117 of 1978. In the said suit, a preliminary decree for partition and separate possession was passed on 07.07.1979 granting 1/6th share to the plaintiff in the suit property, which is a residential house. Since then, the respondent has purchased 1/6th share from the legal heirs of the original plaintiff vide Sale Deed dated 19.06.1989. It is also not in dispute that the present petitioner has purchased a portion of land admeasuring 1109 square feet in the suit property from the original defendant Nos.1 to 6.

4) After purchasing the 1/6th share, the present respondent preferred execution proceedings being Regular Darkhast No.36 of 1990. Initially vide order dated 27.12.2011, the learned Executing Court allowed the present respondent to seek possession warrant with respect to 1/6th share in the suit property. The said order was quashed and set aside by this Court in Writ Petition No.824 of 2012 vide judgment dated 27.11.2012. The order was set aside on the ground that a final decree was admittedly not passed and in the absence of a final decree, a preliminary decree for partition and separate possession could not be put to execution. While

allowing the petition and setting aside the order issuing possession warrant, this Court directed the Executing Court to take appropriate steps for passing final decree. The judgment dated 27.11.2012 is not challenged by either parties and is fully binding *inter se* between the parties.

5) In this backdrop, the respondent preferred an application vide Exhibit 149 for preparing final decree in terms of the preliminary decree passed in the suit for partition. The petitioner filed application at Exhibit 155 for dismissal of the execution proceeding on the ground that the final decree was not passed. The learned Executing Court has decided both the applications by a common order. The learned Executing Court has allowed the application at Exhibit 149 and has rejected the application at Exhibit 155. This order dated 25.06.2013 is subject matter of challenge in the present petition.

6) Mr. Shareef, learned advocate for the petitioner vehemently argues that a preliminary decree for partition cannot be put to execution unless a final decree is prepared. The learned advocate has placed reliance on the following decisions:-

1. ***Bashiruddin Khwaja Mohiuddin Vs. Binraj Murlidhar Shop Malkapur by Partners and ors***¹.

1 1987 Mh.L.J.30

2. *Annasaheb Rajaram Nagane and anr. Vs. Rajaram Maruti Nagane and ors*²

3. *Kisan Bhikaji Dalvi Vs. Krishnabai Maruti Dalvi*³

4. *Shub Karan Bubna Alias Shub Karan Prasad Bubna Vs. Sita Saran Bubna and ors*⁴

5. *Bimal Kumar and anr. Vs. Shakuntala Debi and ors.*⁵

6. *Kattukandi Edathil Krishnan and Anr. Vs. Kattukandi Edathil Valsan and ors.*⁶ in support of his contentions.

7) The legal argument raised by the learned advocate for the petition cannot be faulted. However, in the present case, this Court has passed order in a writ petition directing the learned Executing Court to take steps for preparing final decree. It is in terms of the said order passed by this Court that the respondent moved application at Exhibit 149 *inter alia* requesting the learned Executing Court to take steps for preparing final decree. The learned Executing Court has since then appointed a Commissioner for division of the suit property and based on the report furnished by the Commissioner passed a final decree in the suit on 25.06.2013.

2 2001 (3) Mh.L.J. 53

3 2000 (4) Mh.L.J. 485

4 (2009) 9 SCC 689

5 (2012) 3 SCC 548

6 AIR Online 2022 SC 844

8) It is true that after a preliminary decree is drawn, a final decree proceeding is required to be filed in which property is actually divided in terms of shares carved out under the preliminary decree.

9) In the present case, it is not in dispute that such a final decree proceeding was not filed. Nonetheless, the exercise i.e. expected of a Civil Court to be done in a final decree proceeding is done by the learned Executing Court in compliance of orders passed by this Court in the earlier writ petition. Having regard to the fact that the procedural formalities have been observed, in my opinion, the argument raised by the learned advocate for the petitioner is technical in nature. The argument is that final decree should be passed in a final decree proceeding and not in execution proceeding. Thus, the objection pertains to nomenclature of the proceeding. It is not pointed out that procedure contemplated for preparing final decree is not followed by the learned Executing Court. The objection is clearly technical in nature and deserves to be rejected in view of principle underlying Section 99 of the CPC.

10) It must also be stated that a final decree is also appealable under Section 96 of the Code of Civil Procedure, 1908. The final decree is prepared in the year 2013 itself. It is informed

that the said final decree is not challenged by preferring a substantive appeal.

11) The other contention raised by learned advocate for the petitioner is that the decree could not be put to execution by the transferee/respondent without obtaining leave of the Court. Reliance in support of this contention is placed on Order XXI Rule 16 of the CPC.

12) Perusal of Order XXI Rule 16 of the CPC will indicate that in case where interest of a decree holder in a decree is transferred by assignment in writing or by operation of law, the transferee has a right to apply for execution of the decree. The provision only contemplates that when a transferee files an application for execution of decree, the transferor/deGREE-holder should also be noticed apart from the judgment debtors. The petitioner has purchased shares of the other judgment debtors in the suit property. The other judgment debtors have not raised any objection to execution of the decree. Likewise, the decree-holder or his legal representatives have also not raised any objection. Perusal of Order XXI Rule 16 of the CPC will reveal that a formal order granting permission is not required to be passed by executing Court to enable an assignee/transferee of a decree to institute execution petition. The contention with respect to

entitlement of the respondent, as transferee of decree holder to put the decree in execution is therefore rejected.

13) Apart from this, no other contention is raised during the course of hearing.

14) Writ Petition is therefore **dismissed** with no order as to costs.

15) For the reasons recorded in Writ Petition No.3613 of 2013, CRA No.15 of 2012 is **dismissed**.

16) Having regard to the fact that suit for partition was filed in the year 1978 and the present respondent has purchased the share of original plaintiff vide Sale Deed dated 19.06.1989, the learned Executing Court is requested to expedite the execution proceedings and make an endeavour to decide the same finally as expeditiously as possible and in any case before **31.12.2026**.

(ROHIT W. JOSHI, J.)

Ταπηγά...