



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6075 OF 2023

1. Sadashiv s/o. Barku @ Barikrao Kshirsagar,
Age 66 years, Occu. Agri.,
R/o. Nalwandi Naka, Renuka Nagar,
Beed, Taluka and District Beed
2. Madan @ Sunil S/o. Barku Kshirsagar,
Age 51 years, Occu. Agri.,
R/o. Punam Galli, Beed,
Taluka and District Beed
3. Maruti s/o. Bhaurao Kshirsagar (Died),
Through his L.Rs.
- 3-A Arjun S/o. Maruti Kshirsagar,
Age 61 years, Occu. Agri.,
R/o. Ramtirtha MIDC, Beed,
Taluka and District Beed
4. Prabhu s/o. Maruti Kshirsagar (Died),
Through his L.Rs.
- 4-A Sandip @ Baburao s/o. Prabhu Kshirsagar,
Age 29 years, Occu. Agri.,
R/o. Ramtirtha MIDC, Beed,
Taluka and District Beed
- 4-B Sakhubai w/o. Prabhu Kshirsagar,
Age 51 years, Occu. Agri.,
R/o. Ramtirtha MIDC, Beed,
Taluka and District Beed
5. Baban s/o. Dadarao Kshirsagar (Died)
Through his L.Rs.
- 5-A Santosh s/o. Baban Kshirsagar,
Age 43 years, Occu. Agri.,
R/o. Nalwandi Naka, Renuka Nagar, Beed
Taluka and District Beed

5-B Prakash s/o. Baban Kshirsagar,
Age 41 years, Occu. Agri.,
R/o. Nalwandi Naka, Renuka Nagar, Beed
Taluka and District Beed

5-C Venubai w/o. Baban Kshirsagar,
Age 59 years, Occu. Housewife/Agri.,
R/o. Nalwandi Naka, Renuka Nagar,
Beed, Taluka and District Beed

6. Indubai w/o. Arjun Kshirsagar,
Age 41 years, Occu. Housewife/Agri.,
R/o. Ramtirtha MIDC, Beed,
Taluka and District Beed

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 32

2. The Collector, Beed,
Taluka and District Beed

3. The Sub Divisional Officer,
Beed, Taluka and District Beed

4. The Tahsildar, Beed,
Taluka and District Beed

5. The Deputy Superintendent of Land Record,
Beed, Taluka and District Beed

6. Krushnabai w/o. Vitthalrao Shelke (Died)
Through his L.Rs.

6-A. Vimalbai w/o. Rajaram More,
Age Major, Occu. Housewife,
R/o. Punamgalli, Lonarpura, Beed,
Taluka and District Beed

6-B. Shardabai w/o. Bhimrao Fartade,
Age Major, Occu. Household,
R/o. Punamgalli, Lonarpura, Beed
Taluka and District Beed

6-C. Vidyabai w/o. Raghunath Chavan,
Age Major, Occu. Household,
R/o. Opp. Sagar Garage, Shaunagar,
Beed, Taluka and District Beed .. Respondents

Mr. V. D. Sapkal, Senior Advocate instructed by Mr. S. R. Sapkal and
Mr. A. B. Hawale, Advocates;

Mr. P. D. Patil, A.G.P. for Respondents No.1 to 5;

Mr. R. N. Dhorde, Senior Advocate instructed by Mr. A. C.
Darandale, Advocate for Respondents No.6A to 6C

CORAM : S. G. MEHARE, J.
Reserved on : 08.05.2024
Pronounced on : 10.05.2024

JUDGMENT :-

1. Rule. Rule made returnable with forthwith. With consent of the learned counsel for the respective parties, heard finally.

2. More than a century and half back, the Privy Council (Speaking through the Right Hon'ble Jems W. Colville, J.) in ***the General Manager of the Raj Durbungah v. Maharaja Coomer Ramaput Singh (Court of Wards), (1871-72) 14 MOO IA 605*** lamented that the difficulties of litigants in India indeed begin when they have obtained a decree. The respondent/decreed-holder is going through the same difficulty.

3. A sister has been running after the brothers since 1992 for executing her right to share in her parent's property. Her partition suit was decreed in 2006. A First Appeal was dismissed in 2017,

and the Second Appeal was dismissed in 2021. After the final adjudication, she filed an execution petition before the Executing Court in 2020.

4. The Civil Court sent the precept under Section 54 of the Code of Civil Procedure (for short, "C.P.C.") to respondent No.2 for partition and separate possession by metes and bounds. The Collector sent that precept to the Residential Deputy Collector. He forwarded that precept to the Tahsildar. The Tahsildar registered petition bearing No.2022/ROR/Court Decree/KaVi/81. In that petition, he issued a letter for effecting the partition and delivering possession to the respective shareholders on 22.07.2022. The contesting respondents impugned that order before the Sub-Divisional Officer. By his order dated 17.08.2022, he observed that partition as per letter dated 22.07.2022 would not be appropriate. He directed the Tahsildar to act as per Section 85(2) of the Maharashtra Land Revenue Code, 1966 ("Code, 1966", for short). He again addressed a letter to the Tahsildar on 29.05.2023, reminding him that he did not submit the compliance report as per the letter dated 17.08.2022. He again asked him to take an action as per the law and submit the compliance report. Lastly, by his letter dated 31.05.2023, the Tahsildar informed the S.D.O. that as per the order of the Civil Court, the Circle Inspector was appointed as authorized officer to partition the land and hand over the possession to respective parties. The Circle Inspector submitted

the report on 17.08.2022 that there were sale transactions of the land, the land was in possession of the purchasers, and *Kharip* crop was standing in the field. There was crowd and the possibility of disturbance of law and order. Hence, partition could not be effected. He further submitted that the Civil Court directed the partition of the land under Section 54 of the C.P.C. However, the proposed partition did not violate the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act (for short, "Fragmentation Act"). The action has been taken as per Section 85 of the Code, 1966. Therefore, it is not necessary to follow the procedure under Section 85 of the Code, 1966 again.

5. The Tahsildar issued a letter dated 02.06.2023 to the Circle Inspector directing him to go on the spot and partition the land as per the Court order, as per the measurement and the partition sheet. The petitioners have impugned the said letter in this writ petition.

6. The bone of contention of the learned senior counsel for the petitioners is that a partition chart has been prepared without issuing a notice to the petitioners or a hearing was not granted. The procedure adopted while partitioning the land under Section 54 of the C.P.C. is illegal and contrary to the principle of natural justice. The Tahsildar did not follow the directions of the S.D.O. dated 29.05.2023. The S.D.O. has granted the stay. However, the

Tahsildar again directed the delivery of the possession and partition. It is an abuse of the process of law. The opportunity for a hearing must have been given to the petitioners while preparing the partition chart. However, no such opportunity was granted to them. While preparing the partition chart, the house property, temple, crops and the quality of land must be considered. However, it is not considered. Only the preliminary decree has been passed. The final decree was not passed. The Tahsildar cannot deliver the possession without a final decree. His action is illegal.

7. Learned senior counsel for the petitioners further argued that sub-section 3 of Section 85 of the Code, 1966 provides that the Collector may, after hearing the co-holders, divide the holding and apportion the assessment of the holding in accordance with the Rules made by the State Government under this Code. The Collector did not follow Rules 5, 6, 7, and 9 of the Maharashtra Land Revenue (Partition of Holdings) Rules, 1967 (for short, "Rules"). The opportunity to hear before the partition is confirmed as provided under Rule 7 of the Rules has not been granted. Therefore, the action of the Tahsildar is illegal and violating the rights of the petitioners.

8. To bolster his arguments, he relied on the case of **Somnath s/o. Punja Bargal and another vs. The Hon'ble Minister,**

Revenue Department, Maharashtra State, Mantralaya and others, 2009 BCI 603 : 2010(2) All MR 256.

9. Learned senior counsel for the petitioners further argued that the final decree is to be drawn first and then engrossed on stamp paper(s) of required value. These acts constitute a final decree. He strenuously argued that the actual and physical partition cannot be effected unless the final decree is drawn. To bolster his arguments, he relied on the case of ***Shankar Balwant Lokhande (Died) by L.Rs. vs. Chandrakant Shankar Lokhande and another, A.I.R. 1995 SC 1211.***

10. To counter the arguments of the learned senior counsel for the petitioners, the learned counsel for the respondents argued that the respondents were served before the measurement and the preparation of the chart. They were trying to avoid the execution. Therefore, an application was made to the police for police assistance. The concerned police station recorded the statements of a few of the petitioners. So, their contention that no notice was issued to them before the partition chart is false. The Tahsildar has followed the correct procedure. The petitioners never raised the objection which they are raising in this petition. At the time of the measurement, all the parties concerned, including the petitioners, were present and the panchnama was also drawn accordingly. No illegality has been committed. There was no

quality difference in the filed as it was a single piece of land. Filing this petition is nothing but protracting the execution of the judgment and decree. Petitioners created hurdles every time in execution of the decree. A final decree is not required for the partition under Section 54 of the C.P.C. He has vehemently argued that the proceeding before the Tahsildar has not been concluded. As per Rule 7 of the Rules the officer effecting the partition as per the judgment and decree of the Civil Court has to hear any objection before the confirmation of the partition. The petitioners have an opportunity to appear before the Tahsildar and raise the objection/s, if any. He further relied on the case of (i) **Concord Co-operative Housing Society and others vs. Amedmal Bhatewada (deceased) Chandrakala Shantilal Lunawat and others, 2023 DJLS (Bom.) 1453**, (ii) **Shub Karan Bubna Alias Shub Karan Prasad Bubna vs. Sita Saran Bubna and others, (2009) 9 SCC 689**.

11. Since the objection was raised that notices for measurement of land were not issued, the matter was listed for directing respondent No.5 to produce the record of the measurement case and file an affidavit. The record has been produced.

12. Learned senior counsel for the petitioners submits that the notices of measurement were served upon them. However, they were not served with notice of preparing the partition chart.

Therefore, the letter of the Tahsildar impugned before the Court is illegal.

13. The serious objection of the learned senior counsel for the petitioners is that there shall be a final decree before actual partition. Unless a final decree is passed, it is not executed. As mentioned above, he relied on the case of **Shankar** (supra), in which a preliminary decree was passed declaring the shares of both parties. On April 19, 1958, the order was passed, directing the preparation of a final decree. One of the parties had supplied a non-judicial stamp to engross and sign the final decree to his extent. However, the other side did not submit or supply the non-judicial stamp to engross and sign the final decree to their extent. The High Court held that the limitation began to run from the date when the direction was given to pass the final decree. Since the application was filed after the period of limitation counted from the said date, it was barred by limitation. The question before the Hon'ble Supreme Court was when the limitation began to run for filing an application to pass a final decree on stamp paper. Considering the Rules and provisions, the Hon'ble Supreme Court pronounced that limitation does not begin to run from the date when direction is given to pass the final decree. Mere giving the direction to supply stamp papers for passing the final decree does not amount to passing a final decree. Until the final decree determining the rights of the parties by metes and bounds is

drawn up and engrossed on stamp paper(s) supplied by the parties, there is no executable decree. Further, it has been observed that, thus, the condition precedent is to draw up a final decree and then engross it on stamp papers of required value.

14. The question is, can Collector effect the partition as per the precept sent to him under Section 54 of the C.P.C. without final decree ?

15. The Hon'ble Supreme Court, in a case **Shub Karan** (supra) relied on by the learned senior counsel for respondent Nos.6A to 6C, was dealing with an issue of drawing a final decree and what was the limitation. The respondent had filed an application on 01.05.1987 for drawing up a final decree and the petitioner had filed an application on 15.04.1991 to drop the final decree proceeding as it was barred by limitation. The executing Court dismissed that application, holding that once the rights of the shares of the plaintiffs had finally been determined by the preliminary decree, there is no limitation for an application for effecting the actual partition/division in accordance with the preliminary decree, as it should be considered to be an application made in a pending suit. Against the said order, a petition was preferred before the High Court. The High Court was pleased to dismiss the petition. Under this premise, the question before the Hon'ble Supreme Court was whether the provisions of the

Limitation Act were inapplicable to an application for drawing up a final decree. Discussing the provisions of Order XX, Rule 18(1) and (2), and Section 54 of the C.P.C. along with the provisions of the Limitation Act, it has been held that the third division of Schedule to the Limitation Act does not contain any Article prescribing the limitation for an application for drawing up a final decree. Article 136 prescribes the limitation for execution of any decree or order of the Civil Court as twelve years when the decree or order became enforceable. Article 137 provides that for any other application for which no limitation is provided elsewhere in that division, the period of limitation is three years, which would begin to run from the date when the right to apply accrues.

16. Further, in paragraph No.15, it has been observed that it is thus clear that every application that seeks to enforce a right or to seek remedy or relief on the basis of any cause of action in a Civil Court, unless otherwise provided, will be subject to the law of limitation. But, where an application does not invoke the jurisdiction of the Court to grant any fresh relief based on a new cause of action but merely reminds or requests the Court to do its duty by completing the remaining part of the pending suit, there is no question of limitation. Such an application in a suit that is already pending, which contains no fresh or new prayer for relief, is not one to which the Limitation Act 1963, would apply.

17. Paragraphs No.17 and 18 are relevant which read thus;

“17. Once the Court passes a preliminary decree, it is the duty of the Court to ensure that the matter is referred to the Collector or the Commissioner for division unless the parties themselves agree as to the manner of division. This duty in normal course, has to be performed by the Court itself as a continuation of a preliminary decree. Sometimes, either on account of the pendency of an appeal or other circumstances, the Court passes the decree under Rule 18(1) or a preliminary decree under Rule 18(2), and the matter goes into storage to be revived only when an application is made by any of the parties, drawing its attention to the pending issue and need for referring the matter either to the Collector or the Commissioner for actual division of the property. Be that as it may.”

"18. The following principles emerge from the above discussion regarding partition suits:

18.1 In regard to estates assessed to payment of revenue to the Government (agricultural lands), the Court is required to pass only one decree declaring the rights of several parties interested in the suit properties with direction to the Collector (or his subordinate) to effect actual partition or separation in accordance with declaration made by the Court in regard to the shares of various parties and delivered to respective portion to them, in accordance of Section 54 of the C.P.C. Such entrustment to the Collector under the law was for two reasons. First is that, the Revenue authorities are more conversant with matters relating

to agricultural lands. Second is, to safeguard the interest of the Government in regard to revenue (the second reason, which was very important in 19th century and early 20th century, when the Code has made has now virtually lost its relevance, as revenue from agricultural lands is negligible) Where the Collector acts in terms of a decree, the matter does not come back to the Court at all. The Court will not interfere with the partition by the Collector, except to the extent of any complaint of third party affected thereof.”

18. In paragraph No.29, it has been observed that the present system involving the proceeding for declaration of right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for enforcement of a decree to secure the relief is outmoded and unsuited for present requirements. If there is a practice of assigning separate numbers for final decree proceedings, that should be avoided. Issuing fresh notices to the defendants at each stage should also be avoided. The C.P.C. should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief.

19. Finally, it has been observed that insofar as final decree proceedings are concerned, we see no reason for even legislative intervention. As the provisions of the Code stand at present, initiation of final decree proceedings does not depend upon the application for final decree for initiation (unless the local

amendments require the same). As noticed above, the Code does not contemplate filing an application for the final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the Court. Performance of such function does not require a reminder or nudge from the litigant. The mindset should be to expedite the process of dispute resolution.

20. The ratio of the above case was reiterated in the case of **Concord** (supra).

21. The law as regards the attainment of the finality to the preliminary decree has been crystalized in the above case, and it has been pronounced that the suit continues even after passing the preliminary decree. It is a duty of the Court to continue such suits for partition even after passing the preliminary decree till it is executed as provided under Section 54 of the C.P.C. Order XX, Rule 18(1) of the C.P.C. provides that the Court shall declare the rights of the several parties and issue the directions to the Collector or any gazetted subordinate of the Collector deputed by him in this behalf to effect the partition and separation of the share of each of the parties concerned according to the declaration and with provisions of Section 54 of the C.P.C. Section 54 of the C.P.C. provides that where a decree for partition of

undivided estate assessed to the payment of revenue to the Government or for separate possession of share of such an estate the partition of estate or separation of share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law, (if any) for the time being in force relating to the partition or the separate possession of shares of such estates. The provision is clear that every partition and separate possession of the estates assessed to the payment of revenue to the Government shall be effected by the Collector or the subordinate deputed by him in accordance with the law, if any. So far as the State of Maharashtra is concerned, the Code, 1966 provides for the provisions and the rules for partition on an application of any person or according to the preliminary decree declaring the share made over to him under Section 54 of the C.P.C. The State has enacted the rules for partition, namely, Maharashtra Land Revenue (Partition of Holdings) Rules, 1967. ("Rules 1967", for short). Reading the provision of these two Acts and the ratio laid down by the Hon'ble Supreme Court, in the case of **Shub Karan** (supra), the law is clear that immediately after passing the decree for partition under Order XXI, Rule 18 of the C.P.C. the Court should send the preliminary decree to the Collector for partition as provided under Section 54 of the C.P.C. and then Collector or subordinate deputed by him shall proceed to effect the partition and separate possession under Section 85 of

the Code read with the Rules, 1967. The proceeding before the Collector under Section 85 of the Code, 1966 is not an empty formality. He has to hear the respective parties. The purpose of the hearing is to consider whether there were any changes in the interest of the concerned persons and in the agricultural lands to be partitioned. Sub-Section 3 of Section 85 of the Code provides that the Collector may, after hearing the co-holders, divide the holdings and apportion such assessment of the holdings in accordance with the rules made by the State Government under the said Code.

22. The law is well settled that there is no prohibition in the Civil Procedure Code for passing more than one preliminary decree if the circumstances justify the same. For example, the known law is that the death in the family increases the share, and the birth decreases the share. In such circumstances, the party to the suit in which the preliminary decree is passed may apply for modification of a preliminary decree or for any other reasons if the circumstances justify it. However, unless such justifiable circumstance exists, the execution proceeding before the Collector is not disturbed.

23. Considering the relevant provisions of law as discussed above, this Court is of the opinion that once the preliminary decree is sent to the Collector under Section 54 of the C.P.C., it is the

Collector only who has to effect the partition and the Court is not empowered to do so. The Bombay Court Fees Act, 1959 provides that no Court fee stamp is required for final orders of partition, but when the Collector makes a partition as per the order of the Civil Court, the duty on such instrument shall not exceed 10 Rupees, and the stamp duty is to be paid on all separated shares except the largest remaining share, or in case of shares of equal value, one share. Article 46 Schedule I of the Maharashtra Stamps Act has provided the said provision. However, it could not be said that the preliminary decree is inexecutable under Section 85 of the Code read with Section 54 of the C.P.C. unless it is duly stamped. Reading this section, it is clear that once the Collector effects the partition, it is final, and Court sanction is not necessary. Execution of the partition of the agricultural lands assessed for the payment of revenue to the Government is in the domain of the Collector only.

24. There appears to be no substance in the objection of Mr. Sapkal, learned senior counsel for the petitioners that unless the final decree is passed, the Collector cannot proceed to effect the partition and separate possession of the agricultural land as the Hon'ble Supreme Court, in the case of **Subh Karan** (supra), observed that the C.P.C. does not contemplate filing an application for a final decree.

25. Another objection of the petitioners was that the notice before drawing the partition sheet was not issued to them. Instead of granting any hearing to the petitioners, the Tahsildar has directly issued a letter to the Circle Officer, dated 02.06.2023 (impugned letter), to hand over separate possession to the concerned. Such an act of the Tahsildar violated Sub-section (3) of Section 85 of the Code and Rule 7 of the Rules, 1967.

26. In the case of **Somnath** (supra), this Court was dealing with an identical issue. In the said pronouncement, the Court discussed Section 85 of the Code, 1966 and the relevant Rules of the Rules 1967. It has been observed that it can thus clearly be seen that though the T.I.L.R. has prepared the partition chart, the provisions of Rule 7 of Rules, 1967, which require a hearing to be given to the parties before the Collector confirms the partition is to be followed. Sub-section (3) of Section 85 of the Code mandates a hearing by the Collector before dividing holding and apportioning the assessment of the holding. The said section also mandates following the procedure in accordance with the law and the rules framed by the State Government.

27. In the case at hand, the Tahsildar wrote a letter to the Deputy Superintendent of Land Records to measure the land and prepare the partition chart. There is no quarrel that the notices were served upon the petitioners by the office of the District

Superintendent of Land Records. After measuring the land, he prepared the map with the proposed partition and the partition chart, and thereafter, the Tahsildar issued the impugned letter for effecting the partition as per the partition sheet and the map.

28. The question that has been raised in this case is when the Collector or the sub-ordinate deputed by him shall hear the objection of the parties who raised it.

29. It is the vehement argument of the learned senior counsel for the petitioners that before effecting the actual partition and handing over the possession, the Collector or any person deputed by him shall hear the parties as provided under Rule 7 of the Rules, 1967. He fortified his argument based on the findings recorded by this Court in **Somnath** (supra). This Court, after discussing the entire scheme of effecting partition, observed in paragraphs Nos.7, 8, and 9, which read thus;

“7. Perusal of the entire scheme would, therefore, reveal that effecting partition is not only a ministerial act. The authorities are required to see that the partition is done in an equitable manner so as to ensure that the productivity of the area allotted to each party is in proportion to whose share in the holding. It is also to be noted that before the final partition is effected, the Collector is required to hear the objections, if any of the parties have, regarding the partition which is completed. Though, in affidavit-in-reply, it is stated that the procedure as prescribed has

been followed and though the learned A.G.P. Shri. More and Shri. Hon, appearing for the respondents, strenuously urged the Court to accept the submission that the Rules have in fact been followed, perusal of the material placed on record would reveal that the Rules have not been followed by the Authority. It could be seen that after the partition was completed by the Taulka Inspector of Land Record, he has sent the same for approval to the Collector in the month of October 2006. The Collector, vide communication dated 09.11.2006, had directed the Tahsildar to sanction the partition chart prepared by the TILR and thereafter, to take steps for giving possession to the parties. Thereafter, immediately the notices have been issued on 20.11.2006 and 25.06.2007 for handing over the possession."

"8. It can, thus, clearly be seen that though the partition chart has been prepared by the TILR, the provisions of Rule 7 which requires the hearing given to the parties before the Collector confirms the partition has not been followed."

"9. As already discussed, herein above, Sub-section (3) of Section 85 of the Code, mandates hearing by the Collector, before dividing holding and apportioning assessment of the holding, the said section also mandates following the procedure in accordance with law and the rules framed by the State Government."

30. As against the above citation, the learned senior counsel for

the respondents has relied on **Concord Co-operative Housing Society** (supra), paragraph No.41 has pressed into service which reads thus;

"41. A reference was made by Shri. Khandeparkar to the MLR Rules. as mentioned earlier. Rule 9 thereof provides that Rules 5, 6, and 7 shall apply when any holding is ordered to be partitioned under decree or order of a Civil Court. Rule 5 provides for the mode of effecting partition. The Collector is expected to effect the partition either personally or through such agency as he may appoint. He is expected to take precautions mentioned under that Rule 5. Thereafter, the assessment of the holding is to be distributed in proportion to the share held by the co-holders and the difference can be equitably distributed over the sub-divisions. Rule 7 is important because it provides that if the partition is completed, the Collector shall hear any objections which the party may make, and shall either amend or confirm the partition. This means that the Collector has to first complete the partition and then hear objections and make suitable amendment to the partition which has already made."

31. The conflict between the two senior lawyers is when the Collector should hear them under Rule 7 of the Rules, 1967. Learned senior counsel for the petitioners submits that after the measurement is done and the partition chart is prepared by the Deputy Superintendent of Land Records ("DSLRL", for short), the Collector or the Officer deputed by him to effect the partition shall

hear the respective parties and then proceed to effect the actual partition. Against this, the learned senior counsel for the respondents submits that Rule 7 of the Rules, 1967 provides that after the partition has actually been effected, the officer effecting partition under Section 54 of C.P.C. shall hear the parties and confirm the partition.

32. The regular practice and procedure followed in effecting the partition under Section 85 of the Code, 1966 are after the precept is received, the Authority effecting the partition must get the land measured and the partition sheet prepared by the Land Records office. The purpose behind it is that the Authority effecting the actual partition should know whether the land is divisible and does not violate the provisions of the Fragmentation Act. Rule 5 of the Rules, 1967 provides that so far as practicable, whole Survey Numbers or Sub-divisions of Survey Numbers shall be allotted and recourse for further division as far as possible be allotted to each party, and care should be taken to ensure that the productivity of area allotted to each party is in proportion to his share in the holding. In simple words, the Collector has to take care of and ensure that there is equal partition based on the productivity of the land. Such care is to be taken because the quality and fertility of the lands to be partitioned may vary. The fertile land, which is less in area, may be equal to the larger area with no good productivity. These activities are not done before the

Superintendent of Land Records prepares the partition chart and measurement of the land. He just proposes the possible partition of the lands not violating the provisions of the Fragmentation Act.

33. In Rule 7 of the Rules 1967, the term 'after the partition is complete' is interpreted by the learned counsel for the petitioners that the partition is completed just after the measurement of the land and preparation of the partition chart and not before the actual partition. As against this, the learned senior counsel for respondents interpreted that it is completed after the actual partition is effected.

34. The term 'after the partition is completed' is to be read in the context of the procedure laid down in the Rules 1967 and Section 54 of the C.P.C. After the precept is received by the Collector, he has to hear the parties as provided under sub-section (3) of Section 85 of the Code, 1966. Then, he has to proceed to effect the partition as contemplated under Rule 5 of the Rules 1967. Then, he has to apportion the assessment. In the meantime, he has to ensure that the land proposed for the partition can be partitioned without violating the provisions of the Fragmentation Act and that its partition is possible. These exercises are done to know himself and the parties concerned that the proposed shares by the Land Records office are suited to all and there is no inequitable partition. In this context, the term 'after the partition is

completed' means after the process of measurement and preparation of the partition chart, and it does not mean after the actual partition is effected. For example, if the actual partition is effected, what remains thereafter for hearing, modification, and amendment of the partition or confirmation? Obviously, nothing would remain because the respective shareholders are given separate possession. Once the partition is effected, a further process is to prepare a revenue record. Reading the said term in the context mentioned above, the Court is of the view that the term 'after the partition is completed' means after the land is measured and the partition chart is prepared by the Office of the Land Records and submitted to the Authority effecting the partition. Completing partition, as provided in Rule 7 of the Rule, is the pre-stage of giving the effect to the partition decree by actual separation and handing over possession of the share by metes and bounds.

35. In view of the above discussion, this Court is of the view that the Tahsildar has erred in not granting a hearing to the respective parties as provided under Rule 7 of the Rules, 1967, before proceeding to effect the partition and hand over the possession by metes and bounds. Therefore, his letter dated 02.06.2023, addressed to the Circle Officer to effect the partition, is bad in law. It is, thus, liable to be quashed and set aside.

36. The parties have been litigating since 1992. Therefore, to give an end to the proceeding between parties, the petitioners should appear before the Tahsildar to raise the objections to the partition chart prepared by the Deputy Superintendent of Land Records with an undertaking that after the Tahsildar decides the objections and passes an order either amending or confirming the partition, they would hand over the possession of the land allotted to the share of respondents No.6A to 6C, within two weeks from the order of the Tahsildar passed on the objections.

37. As a result, the petition is allowed, and the letter of Tahsildar, dated 02.06.2023 stands quashed and set aside.

38. All the parties concerned should appear before the Tahsildar on 30.05.2024.

39. The petitioners shall submit their objections to the partition chart prepared by the Deputy Superintendent of Land Records within two weeks from their appearance before the Tahsildar with an undertaking as mentioned above.

40. The Tahsildar shall decide the objections within two months thereafter by giving a hearing to all parties concerned.

41. It is also made clear that any third party claims the right acquired from the parties to the suit during the suit was pending or after the decree is passed should be treated as the decree-holder

or the Judgment debtor, and they would be in their shoes having no independent rights.

42. No order as to costs.

43. Rule made absolute in above terms.

44. The Record and proceedings be returned to Respondent No.5 through the learned A.G.P.

(S. G. MEHARE)
JUDGE

rrd