R. D. No.196/2014
Arun Vs. Anil and Anr.
CNR-MHAU020012802014

ORDER BELOW Exh.01

This is an application for execution of decree passed in Regular Civil Suit No. 2103/2012. It was a decree on the basis of compromise entered between the parties in a suit for partition, separate possession and injunction.

02. This Court has already sent the decree for execution as per Section 54 of the Code of Civil Procedure, 1908. The objection petitioner has then objected the application. Further, an application is made at Exh. 14 by the objection petitioner for closing the present proceeding.

03. I have passed an order below Exh.1 on 06.01.2020 and it was directed that the decree holder shall argue the matter as to how the application is tenable and need to be continued, in view of provision of Section 54 of the Code. However, decree holder is continuously absent. No one is present for the decree holder. Thus, I have no opportunity to hear ld. advocate for the decree holder.

04. I have heard ld. advocate for the objection petitioner. He submits that, in view of the ratio of the judgments of Hon'ble Bombay High Court in the case of Annasaheb Nagne and Anr. Vs. Rajaram Nagne and Ors. (AIR 2001 BOM 303) and Prakash

Bhosale Vs. Laxman Bhosale (AIR 2003 BOM 41) the present application cannot be continued as this Court has become functus officio.

05. In the case of Annasaheb Nagne (supra) it was held that, application made for referring the decree to the Collector is a proceeding in the nature of just a reminder to the Court about its duty to refer the decree to the Collector for execution. In the case of Prakash Bhosale (supra) it was observed that, when the decree is referred to Collector vide Section 54 of the Code, the Court becomes functus officio and the questions of contravention of provisions of law or non-enforceability of the decree due to subsequent events, can be determined only by independent suit.

06. In view of the fact that, the decree holder is not attending the Court since long and in view of ratio in the aforesaid cases, no purpose would be served by keeping the present proceeding pending. As such, the application needs to be disposed off. Therefore, the present application is hereby disposed off.

27/09/2021

Dated : 27.09.2021

(B. D. Tare.)
7th Jt. Civil Judge, J.D.,
Aurangabad.

CIVIL COURT SENIOR DIVISION AURANGABAD

True Copy
Assistant Superintendent
Civil Court (S.D.)
Aurangabad.

Compared by
Jr Clerk
9-10-2021