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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7588 OF 2026

Akbarsaheb Amirsahab Kokani (since
deceased) Through LR Jilani Akbar Kokani ...Petitioner

Versus

Akbarsaheb Amirsahab Kokani (since
deceased) Through LR Aslam Akbar Kokani ...Respondent

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**WITH
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Versus

Akbarsaheb Amirsahab Kokani (since
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Mr. Rafiq Dada, Senior Advocate, a/w Alankar Kirpekar, Ayush Tiwari and Shantanu Chandratre, i/b Shantanu Chandratre, for the Petitioner in WP/7588/2026.

Mr. Alankar Kirpekar, a/w Ayush Tiwari and Shantanu Chandratre, i/b Shantanu Chandratre, for the Petitioner in WP/7589/2026.

Mr. Pralhad Paranjape, a/w Rahul Punjabi, Shweta More and Ishan Shroff, for Respondent Nos. 1.1 and 1.2 in both Petitions.

Mr. Sanjay P. Shinde, for Respondent Nos. 14A and 14B.

Mr. Rishi Soni, a/w Sujay Gawade, Mudita Pawar, i/b Shree and Co, for Respondent Nos. 24 to 30.

Mr. Rupesh Geete, a/w Avesh Ganja, i/b Satyaki Law Associates, for Respondent Nos. 31 to 33.

Mr. R. M. Haridas, a/w Pratik Rahade, for Respondent Nos. 34 to 37, 39 to 41 and 43.

Mr. R. D. Soni, for Respondent No. 42.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 29th JULY, 2026
PRONOUNCED ON: 4th AUGUST, 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. The challenge in these petitions is to a common order dated 20th April, 2026 passed by the Executing Court in Regular Darkhast No. 23 of 1981, whereby the applications filed by the legal representative of the decree holder, to recall an earlier order dated 21st January, 2023 and restrain the parties from entering into and carrying out any construction activity on the suit premises till the partition is effected by the Collector, Nashik, came to be rejected on the premise that after sending the precept for execution, the Executing Court became *functus officio*.

3. Though the litigation has a chequered history, with multiple rounds of proceedings spanning over almost 60 years, yet, in the backdrop of the limited nature of the controversy, this Court considers it appropriate to summarise the bare minimum facts that are required to be noted for the determination of these petitions as under:

3.1 Akbarsaheb Kokani, the father of the petitioner, instituted a suit bearing RCS No. 102 of 1963, seeking administration of the estate of his father, Amirsaheb, and uncle, Mohammadsaheb. The said suit came to be decreed by the judgment and decree dated 29th August 1968. The petitioner claims that, the late plaintiff Akbarsaheb became entitled to 7/80th share in the house properties, 7/80th share in the agricultural lands, and 7/40th share in the compensation received in respect of the acquired land. With the further developments in the intervening period, post the filing of the execution proceedings, the petitioner claims the decree holder's share in the property increased from 7/80th to 7/40th in the agricultural lands.

3.2 With the passage of time, third-party rights were created by the persons who claimed to have a share in the suit property in favour of various parties. There were successive transfers as well.

3.3 On 5th May 2001, the Executing Court had sent a precept to the Collector, Nashik, for effecting partition of the land assessed to revenue. The said proceeding before the Collector has not attained finality. By an order dated 31st January, 2023, the Executing Court directed the Collector to execute the

precept in accordance with the determination in the said order in regard to the rights of the parties, and the Collector was directed to effect the partition.

3.4 The said order was challenged in Writ Petition No. 5741 of 2023. The said petition came to be disposed with the clarification that the order dated 31st January, 2023 does not determine the substantive rights of the parties, and the parties shall be at liberty to agitate the same in the appropriate forum/Court as available to them. The Collector, Nashik, was also directed to give hearing to all concerned parties and thereafter undertake the exercise of effecting partition strictly in accordance with the preliminary decree and the law, within a period of three months from the date of issuance of notice to all parties.

3.5 It is common ground that the Collector, Nashik, has yet not effected the partition. In the meanwhile, the petitioner – legal representative of the decree holder, filed an application before the Executing Court to recall the aforesaid order dated 31st January, 2023, only to the extent of reopening the matter for passing necessary restraint orders, and granting a temporary injunction, thereby restraining the parties, their agents and assignees from entering into and carrying out any

construction activity over the suit premises till the Collector effects the partition, and also directing the local police to remove the men and machinery from the suit premises.

3.6 The application was resisted on behalf of the Judgment Debtors.

3.7 By the impugned order, the learned Civil Judge declined to accede to the prayer of the petitioner observing *inter alia* that, since the precept came to be sent to the District Collector, Nashik, to effect partition, the Executing Court became *functus officio*. Consequently, there was no reason to recall the order dated 31st January, 2023.

4. Being aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

5. Affidavits-in-reply have been filed on behalf of the respondents. Myriad contentions have been raised by the contesting respondents. Reference is made to the conduct of the petitioner and the members of the branch of late Akbarsaheb, especially the transfer of portions of the suit property by executing registered instruments, and the substantial development that has taken place over the suit properties pursuant to the permission granted by the planning authority

on the basis of the registered instruments and the partition chart (*vatap takta*) prepared by the revenue authorities, which has been acted upon. In the light of the question that wrenches to the fore and the view this Court is persuaded to take, it would be superfluous to delve into the contentions in the affidavits-in-reply elaborately.

6. The core controversy that arises for consideration is, whether the Executing Court becomes *functus officio* for all intent and purpose once a precept is sent to the District Collector for effecting partition in respect of lands assessed to revenue?

7. I have heard Mr. Rafiq Dada, the learned Senior Advocate for the petitioner in Writ Petition No. 7588 of 2026, Mr. Alankar Kirpekar, the learned Counsel for the petitioner in Writ Petition No. 7589 of 2026, Mr. Sanjay Shinde, the learned Counsel for Respondent Nos. 14-A and 14-B, Mr. Rishi Soni, the learned Counsel for Respondent Nos. 24 to 30, Mr. Rupesh Geete, the learned Counsel for Respondent Nos. 31 to 33, Mr. R. M. Haridas, the learned Counsel for Respondent Nos. 34 to 37, 39 to 41 and 43, and Mr. R. D. Soni, the learned Counsel for Respondent No. 42, at some length.

8. Mr. Dada, the learned Senior Advocate for the petitioner, would submit that the learned Civil Judge was clearly in error in holding that the Executing Court had become *functus officio* once the precept was sent to the Collector for effecting partition. The learned Civil Judge, according to Mr. Dada, lost sight of the import of the provisions contained in Section 47 and Order XXI Rule 18 of the Code of Civil Procedure, 1908 (“the Code”).

9. Mr. Dada submitted, though there is no prohibition against the sale of an undivided interest in the suit properties, yet, none of the co-sharers has any right to sell a specific portion of the property till there is division by metes and bounds. Mr. Dada would urge that, the Judgment Debtors and their transferees have no right to erect any structure over a particular portion of the suit properties till the partition is effected. It was, therefore, necessary for the Executing Court to examine the issue of the necessity of granting temporary injunction till the Collector effects the partition, so as to essentially preserve the suit property till the actual division by metes and bounds. Reliance was placed on the judgments in the cases of ***Shub Karan Bubna @ Shub Karan Prasad Bub vs. Sita Saran Bubna and ors.***¹ and ***Rajambal vs. Murugappan***²,

1 AIR 2009 SC (Supp) 2863.

2 AIR 1985 Madras 284.

10. Mr. Kirpekar, the learned Counsel for the petitioner, supplemented the submissions of Mr. Dada. Laying emphasis on the phraseology of Section 47 of the Code, it was submitted that all questions relating to the execution, discharge or satisfaction of the decree are required to be determined by the Executing Court only. The mere fact that the Executing Court has sent the precept to the Collector does not imply that the Executing Court is not in the seisin of the matter till the partition is effected by the Collector. None of the parties or their transferees are entitled to assume any portion of the suit property as their exclusive property and erect structures thereon till the property is divided by metes and bounds. Reliance was sought to be placed on the judgment of the Supreme Court in the case of ***Nawab John vs. V. N. Subramanian***³.

11. In contrast to this, Mr. R.D. Soni, who led the submissions on behalf of the respondents, would urge that the application before the Executing Court was completely *mala fide*. Identical prayers were sought in the review petition seeking review of the order passed by this Court in Writ Petition No. 5741 of 2023. Those prayers were not granted by this Court. Thus, the

3 (2012) 7 SCC 738

rejection of those prayers disentitled the petitioner to again agitate the same issue before the Executing Court.

12. Secondly, Mr. Soni would urge, the conduct of the petitioner and the members of the branch of late Akbarsaheb is so gross that they are not entitled to any equitable relief. Having sold the portions of the property which fell to their share, the plaintiffs and the members of the late Akbarsaheb branch intend to abuse the process of the Court to derive further unfair advantage. Most of the purchasers are not present before the Court. In such a situation, no restraint order can be passed.

13. Mr. Shinde, the learned counsel for Respondent Nos. 14-A and 14-B, submitted that, Survey No. 89 is expressly excluded from partition by the Court. Yet, the prayers are made qua Survey No. 89 as well. It was further urged by Mr. Shinde that the documents produced by the petitioner do not appear to be genuine.

14. Mr. Haridas canvassed the submissions in line with the submissions advanced by Mr. R. D. Soni.

15. As indicated above, this Court would refrain from entering into the thickets of facts in regard to the prayers for the grant of

injunction and direction to the authorities to remove the alleged encroachment, and men and machinery from the suit property. The reason is not far to seek. The learned Civil Judge has not at all examined the question as to whether, in the facts and circumstances of the case, and at this stage, the prayer for grant of temporary injunction is justifiable. In fact, without delving into the contentious factual questions, the learned Civil Judge rejected the applications to recall the order dated 31st January, 2023 and reopen the execution proceedings to the extent of restraining the parties from entering into, and carrying out construction over, the suit premises till the Collector effects the partition by metes and bounds holding that, having sent the precept to the Collector for effecting the partition under the provisions of Section 54 and Order XX Rule 18(1), the Court had become *functus officio*. Whether the aforesaid approach of the Executing Court is justifiable?

16. A reference to the few provisions of the Code may be advantageous to understand the scheme envisaged by the Code in the matter of execution of the decrees for partition and separate possession of the lands assessable to revenue and correctly appreciate the scope of the powers of the Executing Court and the District Collector.

17. Section 54 of the Code reads as under:

“Section 54. Partition of estate or separation of share.

Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the 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.”

18. A plain reading of the aforesaid provision would indicate that, though the Civil Court is empowered to adjudicate the claims in relation to, and pass a decree for, partition and separate possession of the land assessed to the payment of revenue to the Government, the Civil Court cannot itself execute such a decree for partition. The decree for partition is to be executed by the Collector or any gazetted subordinate of the Collector. As a necessary corollary, the remit of the jurisdiction of the Civil Court is to declare the rights of the parties in the land assessed to revenue for the purpose of partition and separate possession. The actual partition of such land is to be effected by the District Collector, albeit in strict conformity with the rights of the parties declared by the Civil Court.

19. Order XX Rule 18 of the Code reads as under:

"Order XX Rule 18. Decree in suit for partition of property or separate possession thereof.—

(1) Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then—

(a) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights and interests of the parties interested in the property, but shall direct the partition or separation to be made by the Collector, or any gazetted subordinate of the Collector, 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 estate;

(b) if and in so far as the decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights and interests of the parties interested in the property and giving such further directions as may be required."

20. Sub-rule (1) of Rule 18 pertains to the partition of land assessed to revenue. Sub-rule (2) of Rule 18 deals with the manner of execution of a decree for partition or separate possession of an immovable property other than the land assessed to revenue. In the instant case, we are primarily concerned with sub-rule (1) of Rule 18 of Order XX.

21. Though sub-rule (1) of Rule 18 of Order XX does not expressly refer to the passing of a preliminary decree, unlike sub-rule (2) of Rule 18, yet there does not appear much qualitative difference in the character of the decree passed under sub-rule (1) and (2) of the Rule 18 as in both the scenarios, further action is warranted for the execution of the decree. The decree passed by the Court finally determines the

right of the parties in the suit property which is to be partitioned and separately carved out. In the case of the land assessed to revenue, the partition is to be effected by the Collector. In the case of any other property, the preliminary decree is followed by the appointment of a Court Commissioner to carry out the partition and separate possession.

22. The provisions contained in Section 47 of the Code also deserve to be noted. They read as under:

Section 47. Questions to be determined by the Court executing decree.

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

.....

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[*Explanation 1.*-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."

23. In the backdrop of aforesaid provisions, the question as to whether, after making a reference to the Collector for partition

and separate possession of the land assessed to revenue, the Executing Court becomes *functus officio* for all intent and purpose, is required to be examined.

24. A conjoint reading of the provisions contained in Section 54 and Order XX Rule 18(1) of the Code would indicate the broad division of the powers of the Civil Court and that of the Collector in the matter of execution of a decree for partition and separate possession of the land assessed to revenue. It is in the matter of the actual partition and carving out the shares, or for that matter, the adjustment of the shares in the land, the Collector or the Officer to whom the Collector delegates the power, has the full authority. It can be urged that, the Court's jurisdiction is confined to the determination of the rights of the parties, and sending the precept for execution of the decree to the Collector. Actual partition is within the province of the authority of the Collector. The primary reason for such mechanism is that, the revenue authorities have the experience and expertise in the matter of actual division of lands assessed to the revenue. The secondary reason is the protection of the interest of the State Government in the matter of collection of revenue.

25. After the Court sends a precept to the Collector for

effecting partition, the matter is in the realm of the revenue authorities. At that stage and while the revenue authorities are in seisin of the matter, the Civil Court cannot trench upon the powers of the revenue authorities in the matter of the actual division of the property. Nor can the Civil Court issue directions to the revenue authorities to effect the partition in a particular manner. From this perspective, interference by the Civil Court in the process of effecting partition by the Collector is not countenanced on the premise that, having passed the decree, determined the shares of the parties and sent the decree to the Collector for effecting partition, the Civil Court becomes *functus officio*.

26. A reference to few judicial precedents may now become apposite. In the case of *Ningappa Balappa and others vs. Abashkhan and others*⁴, a Division Bench of this Court enunciated that after a decree for partition of land assessed to revenue has been passed, the Court has nothing further to do with the decree. It is to be executed and the partition is to be effected by the Collector. There cannot, therefore, be any execution proceedings before the Court in the case of such a decree. The observations in paragraph 5 of the aforesaid

⁴ AIR 1956 Bombay 345.

decision are material. They read as under:

“5. It is true that it has been held in several cases that the Court is not entirely deprived of controlling the action taken by the Collector. But this control is very limited. It is to be exercised only if the Collector contravenes the decretal order or transgresses the law relating to partition or refuses to execute the decree. See the cases cited at p. 223 of Sir Dinshaw Mulla's Code of Civil Procedure, 12th Edition.

In this case, it is not alleged that the Collector has acted or intends to act contrary to the decree or any law relating to partition. What is alleged is that the Collector might act contrary to the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948.

But, as the Court's duties came to an end when it Passed the decree and as no proceedings in execution can be taken by it, it is not open to the Court to entertain an application under Section 47 and give directions to the Collector in regard to the manner in which he should execute the decree.”

(emphasis supplied)

27. In the case of *Kisan Bhikaji Dalvi (deceased) by LRs vs. V. Krishnabai Maruti Dalvi*⁵, the learned Single Judge held that when the matter comes before the Collector then he has to pass the final order by coming to the conclusion, how the land should be partitioned between the parties; and then he has to execute that decree by actually putting the parties in possession of the portions allotted to them. The Civil Court has no say in the matter as to how the land be partitioned between the parties, so far as preparing the final order. All that work is to be done by the Collector. If the partition suggested by the Collector is not as per directions issued in the decree or there is

5 (2001) 1 CIVLJ 123.

any other challenge to such partition suggested by the Collector, then the aggrieved party has to file an appeal against such an order against the Collector before the authority prescribed under the Land Revenue Code. The dispute regarding such a partition cannot be brought before the Civil Court.

28. In the case of *Shub Karan Bubna* (supra) in regard to the execution of a decree for partition of the land assessed to revenue, the Supreme Court culled out the principles as under:

“9.1 In regard to estates assessed to payment of revenue to the government (agricultural land), the court is required to pass only one decree declaring the rights of several parties interested in the suit property with a direction to the Collector (or his subordinate) to effect actual partition or separation in accordance with the declaration made by the court in regard to the shares of various parties and deliver the respective portions to them, in accordance with section 54 of Code. Such entrustment to the Collector under law was for two reasons. First is that Revenue Authorities are more conversant with matters relating to agricultural lands. Second is to safeguard the interests of government in regard to revenue. (The second reason, which was very important in the 19th century and early 20th century when the Code was made, has now virtually lost its relevance, as revenue from agricultural lands is negligible). Where the Collector acts in terms of the decree, the matter does not come back to the court at all. The court will not interfere with the partitions by the Collector, except to the extent of any complaint of a third party affected thereby.

(emphasis supplied)

29. In the case of *Bhagwansingh vs. Babu Shiv Prasad and another*⁶, a Division Bench of the Madhya Pradesh High Court, in terms, observed that after passing of the preliminary decree

6 AIR 1974 Madhya Pradesh 12.

for partition of an undivided estate assessed to the payment of land revenue, the Civil Court becomes *functus officio*. The observations in paragraph 5 read as under:

“5. The reason is that the revenue authorities are more conversant and better qualified to deal with such matters than the Civil Court and interest of the Government with regard to the revenue assessed on the assets would be better safeguarded by the Collector executing the decree than by the Court. The partition contemplated by Section 54 is not confined to mere division of lands but includes also the delivery of the shares of the respective allottees. Thus, the Collector or his subordinate would be completely carrying out the partition. The civil Court after passing of the preliminary decree for partition of an undivided estate assessed to the payment of land revenue becomes functus officio and it would have no jurisdiction to act in any manner thereafter so as to pass a final decree or deliver possession to a party in accordance with the said decree.”

30. To what extent, the principle of the Civil Court becoming *functus officio* can be extended, is the moot question. In regard to the matters of proposing partition, actual division of the property having regard to the relative advantages and disadvantages of the particular parcels of land, fertility of the land, location thereof and as well as the delivery of possession, the field is exclusively within the domain of the revenue authorities. The Civil Court is precluded from giving directions in regard the actual method and manner of division of the land. However, where the controversy arises in regard to matters, which are beyond the competence of the revenue authorities, could it be urged that, having sent the precept to the Collector,

the Civil Court becomes *functus officio*?

31. Section 47 of the Code mandates that all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. If the question relates to preserving the subject matter of the decree, in the interregnum i.e. from the date of passing of the decree to the actual partition by the Collector, such question can be legitimately determined by the Civil Court. In a situation of such nature, the Collector would not have the jurisdictional competence to discharge adjudicatory role (apart from that of effecting the partition). In my considered view, in such cases, the principle that after sending the precept to the Collector the Civil Court becomes *functus officio*, cannot be stretched to such extent that an absurd situation may emerge where the affected parties are rendered remediless.

32. In the case of *Abdul Rejak Laskar vs. Mafizur Rahman*⁷, the Supreme Court elaborately examined the provisions contained in the Code in regard to the execution of the decree for partition in respect of the land assessed to revenue. The

⁷ AIR OnLine 2024 SC 956.

Supreme Court observed that though the Court has no power to fetter the discretion of the Collector in the matter of effecting partition, yet, in regard to any issue which the Collector is not competent to decide, the Civil Court will have the power to deal with such issue. The observations in paragraph 47 of the judgment are instructive and hence extracted below:

“47. In regard to estates assessed to payment of revenue to the government (agricultural land), the court is required to pass only one decree declaring the rights of several parties interested in the suit property with a direction to the Collector (or his subordinate) to effect actual partition or separation in accordance with the declaration made by the court in regard to the shares of various parties and deliver the respective portions to them, in accordance with Section 54 of CPC. If the Collector takes action in the decree appropriately, the matter will not come back to the court and the court will not have to interfere in the partition, except attending any complaint of an affected third party. While making the partition the Collector is bound by declaration of the rights of the parties in the preliminary decree. But the Court has no power to fetter the discretion of the Collector conferred under the law. However, in regard to any issue on which the Collector is not competent to decide, the civil court will have the power to dispose of. If the Collector disregards the terms of the decree, the Court is entitled to refer the case back to the Collector to re-partition the property. The Collector must actually divide the estate in the manner he thinks best keeping in mind the nature of the land as revenue paying entity and the stipulations of the decree. The object of this provision is two-fold:

- a. First, the revenue authorities are more conversant and better equipped to deal with such matters than a civil court, and;
- b. Secondly, the interest of the government in regard to the revenue paying estate would be better safeguarded by the Collector than by the civil court.”

(emphasis supplied)

33. In the considered view of this Court, a distinction is required to be drawn in the matter of the jurisdictional limits of

the Civil Court in relation to execution of a decree for partition of land assessed to revenue. At the one end of the spectrum are the cases where the Collector effects the partition on the strength of the power conferred under Section 54 and Order XX Rule 18(1). In that province, the Civil Court cannot interfere by issuing directions in regard to the manner of partition nor can fetter the discretion of the Collector as to the division of the property in a particular fashion and in applying a particular standard/norm for that purpose. At the other end of the spectrum are the cases where the dispute arises between the parties during the period that intervenes the passing of the decree and the actual division of the land by metes and bounds by the Collector. In such cases, the Collector cannot perform any adjudicatory role. Such issues are required to be decided by the Civil Court; either by the Executing Court by exercising power under Section 47 or otherwise in exercise of plenary civil jurisdiction. In such a situation, the principle that, having sent the decree for effecting partition to the Collector, the Civil Court has become *functus officio* cannot be pressed into service to denude the Civil Court's power as the said principle cannot have universal application, *de hors* the fact-situation of the case.

34. On the aforesaid touchstone, reverting to the facts of the

case, it becomes abundantly clear that the issues raised by the petitioner in the application filed before the Executing Court do not touch upon the aspect of actual partition and carving out of separate shares by the Collector. The case of the petitioner was that during the pendency of the execution proceedings, on the basis of third party rights created by the sharers, or their successor in interest, development is being carried out over the portions of the suit property, and that will cause prejudice to the rights of the parties. The learned Civil Judge did not examine whether the application filed by the legal representative of the decree holder, could be adjudicated under Section 47 of the Code, or whether the Executing Court could not at all delve into the grievance of the petitioner or whether the remedy of the petitioner was to approach the Civil Court exercising the original jurisdiction, or the applications did not deserve to be considered on merits on account of the attendant circumstances and the conduct of the parties. The learned Civil Judge rejected the application on the sole ground that having sent the precept for execution of the decree for partition, the Civil Court had become *functus officio*.

35. Consistent with the view this Court is persuaded to take, the impugned order summarily rejecting the applications on the

ground that the Executing Court has become *functus officio*, does not deserve to be sustained.

36. Resultantly, the petitions deserve to be partly allowed and the applications are required to be remitted back to the Executing Court for a fresh decision on merits after providing an opportunity of hearing to parties. It is also necessary to clarify that this Court has not delved into the merits of the application, including tenability of those applications before the Executing Court.

37. Hence, the following order:

: O R D E R :

- (i) The petitions stand partly allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The applications preferred by the petitioner stand restored to the file of the Executing Court.
- (iv) The Executing Court is requested to hear and decide the applications afresh in accordance with law, after providing an effective opportunity of hearing to the parties.
- (v) By way of abundant caution, it is clarified that this Court has not delved into the merits of the applications, including tenability of those applications before the

Executing Court.

- (vi) Rule made absolute to the aforesaid extent.
- (v) No costs.

[N. J. JAMADAR, J.]