

ITEM NO.7+61

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).11061/2023

(Arising out of impugned final judgment and order dated 25-04-2023 in CRA No. 285/2022 passed by the High Court of Judicature at Bombay)

M/S CONCORD CO OPERATIVE HOUSING SOCIETY & ORS. Petitioner(s)

VERSUS

AMEDMAL BHATEWADA (DECESED)

THR. LR. CHANDRAKALA SHANTILAL LUNAWAT & ORS. Respondent(s)

(FOR ADMISSION and I.R. and IA No.105117/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.105119/2023-EXEMPTION FROM FILING O.T.)

WITH

SLP(C) No.11051/2023 (IX)

(FOR ADMISSION and I.R. and IA No.105050/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.105052/2023-EXEMPTION FROM FILING O.T.)

SLP(C) No.11077/2023 (IX)

(FOR ADMISSION and I.R. and IA No.105387/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.105390/2023-EXEMPTION FROM FILING O.T.)

SLP(C) No.11757/2023

(FOR ADMISSION and I.R. and IA No.110657/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.110658/2023-EXEMPTION FROM FILING O.T.)

Date : 05-07-2023 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY

HON'BLE MR. JUSTICE PANKAJ MITHAL

**For Petitioner(s) Mr. Shekhar Naphade, Sr. Adv.
 Mr. Shashibhushan P. Adgaonkar, AOR
 Mr. Omkar Jayant Deshpande, Adv.
 Mr. Umesh Tare, Adv.**

Mr. Yogesh Korke, Adv.
Ms. Aishwarya Dash, Adv.
Ms. Farah Hashmi, Adv.
Mr. Prashant Pratap, Adv.

Mr. Shyam Divan, Sr. Adv.
Mr. Sandeep Sudhakar Deshmukh, AOR
Mr. Karan Parmar, Adv.
Mr. Tushar D. Bhelkar, Adv.

Mr. Anil Anturkar, Sr. Adv.
Mr. Sugandh B. Deshmukh, Adv.
Mr. Prashant R. Dahat, Adv.
Mr. Puneet Yadav, Adv.
Mr. Sourabh Gupta, Adv.
Mr. T. R. B. Sivakumar, AOR

Mr. Prakhar Tandon, Adv.
Mr. Abhinav Agrawal, AOR

For Respondent(s) Mr. P. S. Patwalia, Sr. Adv.
Mr. Sidhartha Bhatnagar, Sr. Adv.
Mr. Bhalchandra Nikte, Adv.
Mr. Mayur Khandeparkar, Adv.
Mr. Gaurav Agrawal, Adv.
Mr. Chaitanya Nikte, Adv.
Mr. Anand Dilip Landge, AOR
Mr. Avineesh Jha, Adv.
Mr. Dinesh Godara, Adv.

Mr. Anand Dilip Landge, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

1. From the petitioner's side, arguments were advanced by the learned Senior Counsel, Mr. Shekhar Naphade, Mr. Shyam Divan and Mr. Anil Anturkar. The contesting respondents are represented by Mr. P.S. Patwalia, learned Senior Counsel and he makes elaborate submissions for sustaining the impugned judgment of the High Court.

2. The matter pertains to valuable property in Pune Town and this property was the subject matter of the Decree dated 27.10.1945 in Partition Suit No.955 of 1944 declaring 50% share in favour of Amedmal Bhatewada. The other side in the picture are the two brothers Shankar and Kishanmal, who are claiming through their father.

3. Following the preliminary decree, although, steps were taken for execution in the early stage, they did not fructify and in the meantime several sale transactions had taken place in the years 1967, 1973, 2006, 2018 and 2021. The petitioners are some of the purchasers of the said property and it is projected that property is being developed to accommodate large number of tenements.

4. The issue that requires consideration in these matters, *inter alia*, is whether the Decree dated 27.10.1945 should be considered as a preliminary decree or it is a final decree. Also whether the third party rights, which, in the meantime, have accrued, either through a legal process or otherwise, are also to be considered while considering the application filed by the decree holder, under Section 54 of the Code of Civil Procedure. It is also necessary to consider whether the decree could be implemented after such long passage of time on the basis of the application made in the year 2021, under Section 54. Moreover, which law would be applicable for the purpose of execution, i.e., the law when the decree was passed in 1945 or when the application for execution is

moved, is also to be ascertained.

5. From the respondent's side, it is contended that the decree dated 27.10.1975 covered an area of 5½ acres and the petitioners can at best have a claim to the extent 50% of the said area but can have no claim beyond half of the decreed land. It is also pointed out that if constructions are carried out in the vacant land, the same will prejudice the decreeholder from getting the fruits of the decree.

6. Mr. Patwalia further submits that several arguments have been made by the petitioners counsel before this Court, but those were never part of the contention raised before the High Court. On this, the petitioner's counsel have serious objections.

7. We have considered the respective submissions made by the rival parties. Let notice be issued, returnable in eight weeks.

8. In the meantime, there shall be stay of operation of the impugned judgment dated 25.04.2023 of the Bombay High Court in Civil Revision Application No. 285 of 2022 and other connected cases. Moreover, there shall be no construction in the meantime on the vacant area covered by the decree dated 27.10.1945.

(DEEPAK JOSHI)
COURT MASTER (SH)

(KAMLESH RAWAT)
ASSISTANT REGISTRAR