

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

WRIT PETITION NO. 6604 OF 2014

Sau. Vijaya Narendra Kene alias
Vijaya Gangadhar Bhope (Dead)
Through legal heirs:-
1-A Onkar Narendra Kene and others .. Petitioners

VS

Kamalbai Gangadhar Bhope (Dead),
Legal Heirs are the Petitioners and
other respondents i.e. respondents
Nos. 2 i.e. (2A) to (2B), 3 and 4 .. Respondents

Mr. Anil S. Bajaj, Advocate for petitioners
Mr. S. P. Thorat, Advocate for respondent No.3

CORAM : N.W. SAMBRE, J.
DATE : 4th March, 2015

ORDER

1. Impugned in the present petition, is an order passed by the executing court (Learned Civil Judge, Senior Division, Sangamner) on 27-09-2012 in execution proceedings bearing Special Darkhast No. 3 of 1996, permitting the decree holder to carry out appropriate amendments in the darkhast application.

2. In pursuance of the order of the executing court, the respondents in the present petition have submitted amendment application in substitution of execution application in the court of Civil Judge, Senior Division, Sangamenr, on 12-10-2012.

3. Mr. Bajaj, learned counsel appearing on behalf of the petitioners, would urge that the order passed by the executing court on 27-09-2012 has no recognition under Order XXI of the Code of Civil Procedure, 1908. He further urged that the action taken pursuant thereto by the respondents herein of filing amendment application is not in appropriate format , as such, is liable to be set aside.

4. Learned counsel for respondent no. 3 Mr. Thorat strenuously opposed the prayer made by Mr. Bajaj, urging that the execution court has not dwelt upon the claim put forth by respondents in accordance with application at Exhibit 237. According to him, the course of law will follow.

5. Having considered rival contention of the parties, it is noticed that the order dated 27-9-2012 permits the respondents herein to carry out the amendment in the executing proceedings. The said amendment is submitted by the respondents herein before the executing court and the executing court is seized of the matter. Right as has been claimed through amendment would be looked into and considered by the executing court in the light of provisions under Order XXI of the Code of Civil Procedure and the principle that the executing court will not travel beyond the decree will be followed.

6. In the light of above observations, in my opinion, no interference in the impugned order is called for in the writ petition.

7. Writ petition, as such, stands dismissed.

N.W. SAMBRE, J.

pnd