

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5838 OF 2012

RASHIDA BEE W/O RAMJOHAMMAD SHAIKH PETITIONERS
AND OTHERS

VERSUS

PARSHURAM S/O VITHOBA UBHEDAL RESPONDENTS
AND OTHERS

Mr.S.V.Natu, Advocate for the petitioners.

Mr.V.B.Anjanwatikar h/f Mr.A.V.Hon, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/03/2015

PER COURT :

1. I have heard the learned Advocates for the respective sides.
2. An agreement to sale was signed on 23/01/1975 between Parshuram Vithoba Ubhedal and the petitioners. Land admeasuring 20 hectre 50 R at Taluka Shevgaon, Dist. Ahmednagar was at issue.
3. Respondent No.1 herein filed RCS No.16/1979 before the Trial Court against the petitioners and respondent Nos. 2 to 4 herein, seeking specific performance of agreement of sale in respect of the said agricultural land Gat No.129 at village Talni, Tal.Shevgaon. The suit was decreed. However, RCA No.268/1985 filed by the petitioners was

allowed and the suit filed by respondent No.1 Parshuram was dismissed.

4. Respondent No.1 Parshuram preferred Second Appeal No.164/1991, which came to be allowed on 10/11/2008 and the judgment of the Appeal Court in RCA No.268/1985, was quashed and set aside thereby sustaining the decree.

5. Execution proceedings R.D.No.40/1986 has been preferred by respondent No.1 through Power of Attorney Shivaji Pandurang Aaware. It is stated by Mr.Anjanwatikar, learned Advocate for respondent No.1 that the sale deed in pursuance to the agreement to sale has been executed in December 2014. Possession of the suit land is to be handed over to the Power of Attorney Holder.

6. The issue that has arisen between the parties is that the petitioners contend that original plaintiff Parshuram is not heard of for the last 20 years. 7 years of his dis-appearance leads to a presumption that he is dead. Legal representative of Parshuram has not been brought on record by the Power of Attorney Holder Shivaji Pandurang. The petitioners, therefore, prayed for dismissal of the suit.

7. The petitioners had preferred applications Exh.39 and 51, which have been rejected by the Trial Court. Orders are not challenged.

8. The petitioners have filed application Exh.84, praying for dismissal of execution proceedings. Application Exh.84 has been rejected by order dated 28/11/2011, which is challenged in this petition, filed on 17/01/2012. The petitioners have also preferred application Exh.86 once again seeking dismissal of the execution proceedings, which has been rejected by the impugned order dated 28/11/2011.

9. Having considered the rival submissions, the issue that attracts attention is as regards the whereabouts of original plaintiff Parshuram. Mr.Anjanwatikar, learned Advocate submits that Parshuram visits his family intermittently. However, there has been no contact with Parshuram for at least about 7 years, as on date.

10. Contention of the petitioners is that the Power of Attorney Holder cannot pursue legal proceedings on behalf of Parshuram in perpetuity. If the presumption after 7 years of disappearance in Law is that Parshuram is dead, the Power of Attorney holder can very well bring on record the legal heirs of Parshuram, who have attained the age of majority. Mr.Anjanwatikar, learned Advocate submits that there is no difficulty in bringing the legal heirs of Parshuram on record in the execution proceedings.

11. In the light of the above, this petition need not be kept pending. Writ petition is, therefore, disposed of.

12. Respondent No.1, Power of Attorney Shivaji Pandurang or the legal heirs of Parshuram may move an appropriate application so as to bring the legal heirs of Parshuram on record based on the presumption that Parshuram is dead since he is not heard of and is missing for more than 7 years.

13. Upon the legal heirs having been brought on record, the Executing Court shall proceed with R.D. No.40/1986 from the stage at which it presently stands. Since the execution proceedings are pending from 1986, the Executing Court is directed to decide RD No.40/1986 in accordance with Law, as expeditiously as possible and preferably on or before 31/07/2015, in the event the said proceedings are not stayed by any other Court and/or if there are no legal impediments in deciding it within the time frame as directed by this Court.

(RAVINDRA V. GHUGE, J.)