

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 2385 OF 2015**

Digambar S/o Vitthalrao Mete,  
Age: 55 years, Occu. Agriculture,  
R/o : village Bharaj, Taluka, Ambajogai,  
District Beed.

...PETITIONER

versus

Rajaram S/o Sambhaji Mete,  
Age: 63 years, Occu: Agriculture,  
R/o : village Bharaj, Taluka, Ambajogai,  
District Beed and others

...RESPONDENTS

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Mr. R.S. Deshmukh a/w Mr. A.R. Joshi, Advocates for Petitioner  
Mr. T.G. Gaikwad, Advocate for respondents No. 1, 2 and 3.

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**CORAM : SUNIL P. DESHMUKH, J.**

**DATED : 19<sup>th</sup> MARCH, 2015**

**Order :-**

1. Petitioner is before this court purportedly aggrieved by order dated 20-11-2014 in Miscellaneous Civil Application No.19 of 2013, whereunder Civil Judge, Senior Division, Ambajogai has dismissed objection to the execution of the decree passed in Regular Civil Suit No. 228 of 1981.

2. Petitioner objects to the execution of decree primarily on the ground that due to application of consolidation scheme, several changes have occurred and the decree, as is being sought to be executed, cannot be executed by the decree holders. The petitioner,

who is judgment debtor No. 4 contends that consolidation and shares as have been mentioned in Exhibit-135/D are not correct so also the sketch map drawn and are contrary to the decree. He then purports to oppose execution of the decree claiming that decree holders have no right to the properties as referred to in the sketch map in the application Exhibit-135/D and claims that application Exhibit-135/D is misleading. Therefore, he contends that grant of application is not proper and legal and the executing court cannot go behind the decree.

3. The miscellaneous civil application was resisted by the decree holders by filing their say at Exhibit-11/B. It was contended by them that the contents of the application are incorrect and false. They also denied the contention that decree holders have no right in the property as appearing in the map under Exhibit-135/D and those are contrary to the sketch map of the pleadings. They further refer to various applications as have been made from time to time by the relatives of judgment debtors and contend that this is yet another attempt to delay the execution of decree.

4. The executing court, vide order impugned had considered that Sanjay Dhondiram Jadhav, son-in-law of present petitioner/ judgment debtor No. 4 had filed writ petition No.4141 of 2011 for decision afresh on the objection application filed at Exhibit-164 in

the execution proceeding and the same has been dismissed. Said Sanjay Dhondiram Jadhav purportedly transferred the suit property to Sunandabai W/o Digamber Mete wife of judgment debtor No. 4 i.e. present petitioner during the pendency of the execution proceeding. Sunandabai had filed application Exhibit-110 purporting to object to the execution petition. Her application has also been rejected on 06-09-2014. Sunandabai against rejection of her objection had been before this Court by filing writ Petition No. 9732 of 2014. Said writ petition came be rejected by this Court on 10-11-2014.

5. Present petitioner - Digamber had filed writ petition bearing No. 3624 of 2011 raising similar objection to the execution of decree that the decree is not executable in view of the changed circumstances, the property cannot be identified. Said writ petition was rejected by the learned Single Judge of this Court on 09-06-2011. Thereafter, present Miscellaneous Civil Application has been filed by the petitioner. Against order dated 09-06-2011 passed by the learned Single Judge of this Court, Letters Patent Appeal Stamp No. 16657 of 2011 had been filed. The division bench of this Court under order dated 01-08-2014 dismissed the Letters Patent Appeal observing that the property can be identified by considering the boundaries mentioned in the suit and therefore the decree is executable.

6. The trial court appears to have taken stock of the entire situation and has considered that present application has been filed by judgment debtor No. 4 with view to prolong the execution of the decree. It appears that execution is being sought in respect of the property claimed in the suit.

7. Taking into account aforesaid, objection as has been raised, is unsustainable for, the decree has been passed in respect of the properties claimed in the plaint and execution in respect of the same has been sought. This is another attempt to delay and procrastinate execution of the decree.

8. As such, I am not inclined to exercise discretion vested in this Court, under Articles 226 and 227 of the Constitution of India. Writ Petition stands rejected.

Sd/-

**( SUNIL P. DESHMUKH, J. )**

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