

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

WRIT PETITION NO. 3755 OF 2015

|                                    |      |             |
|------------------------------------|------|-------------|
| Digambar s/o Vitthal Mete and ors. | .... | Petitioner  |
| vs                                 |      |             |
| Rajaram s/o Sambhaji Mete          | .... | Respondents |

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Mr. Rajendra S. Deshmukh, with Mr. A.R.Joshi, Advocates for petitioner

Mr. T. G. Gaikwad, Advocate for respondents no. 1 to 3

CORAM : SUNIL P. DESHMUKH, J.  
DATE : 16TH APRIL, 2015

ORDER

1. Present petition by original judgment debtors no. 1 to 3 has been moved against order dated 19-03-2015 passed by executing court, rejecting their application under Exhibit-236 for appointment of court commissioner to find out the subject matter under the decree in Regular Darkhast No.5 of 2002.

2. There have been series of petitions filed against the execution of decree in Regular Darkhast No.5 of 2002. This court under order dated 19-03-2015 passed in writ petition no. 2385 of 2015 had considered that and observed in paragraphs no. 4 and 5 thus;

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 to 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.*

3. It was further observed that the matters are being filed with a view to procrastinate execution of the decree on one or the other ground. While the order was passed in aforesaid writ petition, present order had been passed by executing court on Exhibit-237.

As a matter of fact, while it comes to execution, it is for the executing authority to execute the decree in accordance with the description of the property given in the decree.

4. In such a case, appointment of court commissioner would hardly be necessary. The executing court has considered the submissions and has also observed that the application has been moved to prolong the matter.

5. The division bench, as referred to in paragraph no. 5 of decision in writ petition no. 2385 of 2015 reproduced herein-above, while dismissing letters patent appeal (stamp) no. 16657 of 2011 against the order dated 09-06-2011 of dismissal of writ petition no. 3624 of 2011, has observed that the property can be identified by reference to the boundaries mentioned in the suit and therefore the decree is executable.

6. In view of the same, no fault can be found with the order impugned. Writ petition, as such, stands rejected.

SUNIL P. DESHMUKH, J.

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