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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5577 OF 2015

Digambar Vitthalrao Mete

PETITIONER

VERSUS

Rajaram Sambhaji Mete & others

RESPONDENTS

.....

Mr. S. V. Jadhav, Advocate for the petitioner

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

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 17th JUNE, 2015

ORDER :

1. After hearing learned advocate for the petitioner, it appears that a decree for possession had been granted by the trial court way back in the year 1992 in respect of properties bearing survey No. 69, 70 and 77 in Regular Civil Suit No. 228 of 1981. It is the submission of learned advocate for the petitioner that survey No.77 is a self acquired property, acquired after adoption of the petitioner and as such, could not have formed subject matter of the suit. It also appears that as yet the decree has not been intercepted by any further orders either by appellate court or by the Supreme Court, though it is contended by the petitioner that proceedings are pending in the Supreme Court.

2. Mr. Gaikwad, learned advocate for the respondents - caveators, on the other hand submits that the petitioner had earlier on been before this court under several proceedings taking objection to execution of decree. He refers to a decision of division bench of this court dated 1st August, 2014 in Letters Patent Appeal Stamp No. 16657 of 2014 arising out of writ petition No. 3624 of 2011 as well as order dated 6th March, 2014 in writ petition No. 4141 of 2011, which according to learned advocate for the respondents was prompted at the instance of present petitioner.

3. It is further submitted that present petitioner had been before this court in writ petition No. 2385 of 2015, which had been preferred against order dated 20th November, 2014 in Miscellaneous Civil Application No. 19 of 2013 dismissing the objection to execution of the decree passed in Regular Civil Suit No. 228 of 1981. This court, under order dated 19th 7. Taking into account aforesaid, objection as has been raised March, 2015 had dismissed the writ petition observing thus -

"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 e7. Taking into account aforesaid, objection as has been raisexecution 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.”*

4. Thrust of the contentions today before this court, is as stated hereinabove that survey No.77 could not have been subject matter of the suit, it being self acquired property. As a matter of first principle, while executions are considered, executing courts are not supposed to go behind the decree and looking at decisions in earlier proceedings, I am not inclined to exercise discretionary powers in favour of the petitioner. Writ petition as such, is not being entertained and is rejected.

[SUNIL P. DESHMUKH, J.]