

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

**WRIT PETITION NO. 8797 OF 2015
WITH
CIVIL APPLICATION NO. 10601 OF 2015
WITH
CIVIL APPLICATION NO. 11644 OF 2015**

Sangita Bhagchand Bhawale and others ...PETITIONERS

versus

Sadar Abchalnagarsingh S/o Sardar Karansingh
Bindra and others ...RESPONDENTS

.....
Mr. P.N. Surwase, Advocate for Petitioners
Mr. A.D. Kasliwal, Advocate for respondents
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 7th OCTOBER, 2015

Order :-

1. Present writ petition has been moved against order dated 01-07-2015 on Exhibit-138 and civil application No. 10601 of 2015 has been moved against order dated 17-08-2015 on Exhibit-179 passed by the executing court (3rd Joint Civil Judge, Junior Division, Aurangabad) in execution proceeding bearing regular darkhast No. 30 of 2011.

2. After hearing learned counsel for parties, position which clearly emerges is that,

Regular civil suit No. 52 of 1993 had been instituted by plaintiffs - decree holders against defendants, *inter-alia*, present petitioners No. 13 and 14, for possession of land bearing survey No. 22/2

admeasuring 2 Acres 2 Gunthas situated at Paithan road, Aurangabad corresponding C.T.S. No. 18823 to 18335 and also for injunction restraining the defendants from alienating, mortgaging and creating third party interest in respect of suit the property. Said suit had been decreed. Position appears to be that present petitioners No. 1 to 12 are sons, daughters or wards of original defendants No. 1 and 2 (present petitioners No. 13 and 14) in said suit.

3. Regular Civil Suit No. 52 of 1993 initially, was decreed *ex-parte*. As such, original defendants had moved regular civil appeal bearing No. 20 of 2001. In the same, the *ex-parte* decree had been set aside and the matter was remanded to trial court for re-adjudication. Thereafter regular civil suit no. 52 of 1993 once again came to be decreed under judgment and decree dated 31-03-2015.

4. It appears that original defendants had purportedly preferred an appeal against judgment and decree dated 31-03-2005 and had filed Miscellaneous Application Requiring Judicial Inquiry (MARJI) No. 225 of 2005. Said MARJI had been rejected by the appellate court under judgment and order dated 10-04-2007. Against said order, second appeal bearing No. 594 of 2007 had been preferred before high court. The high court under its judgment and order dated 07-04-2008 had dismissed the second appeal.

5. Original defendants had also instituted regular civil suit bearing No. 34 of 2001 seeking declaration that decree obtained (initial) is fraudulent. However, said suit came to be dismissed on 15-12-2008

and appeal bearing No. 9 of 2009 therefrom was also dismissed on 30-03-2009. So was the case in respect of second appeal No. 573 of 2009 which had been dismissed by high court on 22-09-2009.

6. As stated above, it appears that decree in regular civil suit No. 52 of 1993 dated 31-03-2005 has eventually become final. Pursuant to that decree Regular Darkhast No. 30 of 2011 for execution of decree dated 31-03-2005 in regular civil suit No. 52 of 1993 has been filed and is being proceeded with.

7. Present petitioners No. 1 to 12 had objected to the execution of the decree, that objection had been turned down and thereafter proceedings bearing regular civil appeal No. 289 of 2014 had been preferred by the petitioners. Said regular civil appeal had been dismissed by the appellate court on 26-02-2015. Against which, second appeal bearing No. 98 of 2015 was preferred by the petitioners/objectors and the same came to be dismissed by Hon'ble single judge of this court on 08-05-2015. Petitioners had filed application bearing No. 95 of 2015 seeking review of the decision in second appeal, which was also dismissed by Hon'ble single judge of this court on 01-07-2015.

8. Against aforesaid decisions in second appeal and in the review application, present petitioners No. 1 to 12 had been before the Supreme Court in Special Leave to Appeals bearing No. 22002-22003 of 2015 and the same came to be withdrawn upon instructions of the present petitioners, as can be gathered from the order passed by the

Supreme Court on 31-08-2015.

9. Present petition has been moved purportedly aggrieved by order on Exhibit-138 dated 01-07-2015. Application Exhibit 138 was moved by the decree holders for issuance of warrant of possession with police aid. The executing court, taking stock of the situation, had passed common orders on Exhibit- 140 to 143, 154 to 157, 158 to 161 and 138 in regular darkhast no. 30 of 2011. Executing court has referred to the background of the litigation in paragraph No. 3 of the impugned order.

10. Executing court has further referred to that Exhibit-32 as had been filed by judgment debtors No. 3, 4, 11 and 12 once again objecting to decree on the ground of fraud, culminated into non acceptance of claim by judgment debtors under orders of this high court. The decree holders had objected to the tenability of Exhibit-32 and have accordingly succeeded.

11. Thereafter, it also appears that the execution proceeding was resisted on various grounds including that of fraud by filing applications at Exhibit Nos-18, 36, 61 and 68 which were decided on merits and warrant under Order XXI, Rule 35 of the Code of Civil Procedure had been issued accordingly, however, execution could not take place and further applications bearing Exhibit Nos- 80, 81, 84, 85, 88, 89, 100, 102, 107, 112, 113, 115, 118 and 120 raising similar contentions and making similar claims had been made demanding fresh trial but said applications were also decided on merits. These orders were confirmed

by the first appellate court and thereafter by the high court, under orders referred to hereinbefore.

12. It further appears from the impugned order dated 01-07-2015 that there is an attempt of judgment debtors/petitioners by filing transfer proceedings pursuant to section 24 of the Code of Civil Procedure before the Principal District Judge, Aurangabad with same allegations. That application was rejected on 09-09-2014. Thereafter, an application came to be moved by strangers under Order XXI, Rule 97 of the Code of Civil Procedure, however, the court found that said applicants (strangers) claim rights through judgment debtors and have no any independent title.

13. The executing court upon the background as is referred to hereinbefore considered that applications are being filed to cause delay and protract the proceedings. Having regard to aforesaid background, the court allowed Exhibit-138 filed by the decree holders.

14. Learned counsel for petitioners further refers to civil application No. 10601 of 2015 referring to order dated 17-08-2015 on Exhibit-179 moved by decree holders for re-issuance of possession warrant. While passing order on the application, executing court has observed that *pendente-lite* construction cropped up on the suit property appears from the judgment and decree passed. However, learned counsel for petitioners submits that it is their contention that construction had been existing from long time before the suit had been decreed and they should get opportunity to show the same. Learned counsel for

petitioners has been fair enough to state that no such contention/application had been moved before the executing court. However, it appears that petitioners had opposed execution of decree under various proceeding hitherto and have not succeeded.

15. It is being contended that, since decree had been sold/purchased at Rs.60,00,000/-, they would pay such a sum and have prayed for directions in this respect in this writ petition. This, however, is beyond scope of the execution proceedings.

16. Thus, it is clear that petitioners No. 1 to 12 's claims have been litigated over culminating into second appeal no. 98 of 2015 and decisions have not been in their favour.

17. Petitioners No. 13 and 14 are original defendants No. 1 and 2 who suffer the decree against them which remained unaltered in spite of their challenge to the decree.

18. The petitioners No. 1 to 12 are daughters or wards of original defendants No. 1 and 2 in regular civil suit No. 52 of 1993, present petitioners No. 13 and 14 and considering the background that various litigations have been fought over and neither original defendants nor present petitioners/objectors have succeeded in the same and that even their attempts upto high court have failed. In the circumstances, no error or fault can be said to have been committed by the executing court while passing the impugned orders. Having regard to aforesaid request under civil application No. 11664 of 2015 cannot be considered.

19. In the circumstances, writ petition and civil applications bearing No. 10601 of 2015 and 11644 of 2015 are not being entertained and stand dismissed.

20. At this stage learned counsel for petitioners requests for liberty to file appropriate application before the executing court. It is upto the petitioners to make such an attempt, if so advised and if it is maintainable and tenable.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK