

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

WRIT PETITION NO. 7186 OF 2014

1. Shrikishan s/o Vachista Handibag,
Age: 38 years, Occ: Agri.,
R/o. Anegaon, Tal. Kaij,
Dist. Beed.
2. Pandurang s/o Vachista Handibag,
Age: Major, Occ: Agri.,
R/o. Anegaon, Tal. Kaij,
Dist. Beed.
3. Shahu s/o Pandhari Handibag,
Age: Major, Occ: Agri.,
R/o. Anegaon, Tal. Kaij,
Dist. Beed.

...Petitioners
(Ori. Defendants/
Objection petitioners)

versus

1. Pandurang s/o Ramchandra @
Ramrao Revalkar,
Age: major, Occ: Agri.,
R/o. Modinagar (Opposite Wanjara
Vastigruha) Ambajogai,
Tq. Ambajogai, Dist. Beed.
2. Prabhakar s/o Ramchandra @
Rangrao Revalkar
(deceased through his L.Rs.)
- 2/A. Premalabai w/o Prabhakar
Revalkar, Age: Major,
Occ: house hold, r/o Sirsala,
Tq. Parli-Vaijanath, Dist. Beed,
now at House No.116/28, HUDCO,
Nanded, Tq. & Dist. Nanded.
- 2/B. Ashok s/o Prabhakar Revalkar,
Age: Major, Occ: Service,
R/o. As above.
- 2/C. Dinkar s/o Prabhakar Revalkar,
Age: Major, Occ: Service,
R/o. As above.

2/D. Vinayak s/o Prabhakar Revalkar,
Age: Major, Occ: Pigmy Agent,
R/o. As above.

2/E. Balasaheb s/o Prabhakar Revalkar,
Age: Major, Occ: Education,
R/o. As above.

...Respondents
(Ori.plaintiffs)

.....
Mr. V.D. Salunke, Advocate for petitioners
Mr. MV. Deshpande, Advocate h/f Mr. M.D. Narwadkar,
Advocate for respondent Nos. No.1, 2A, 2C, 2D, 2E.

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CORAM : N.W. SAMBRE, J.

Reserved on : 18th April, 2015
Pronounced on : 23rd April, 2015

ORDER :

This petition is by judgment debtors in R.D. No. 7 of 2001 pending on the file of 2nd Joint Civil Judge, Junior Division, Kaij, Dist. Beed.

2. The respondents filed Regular Civil Suit No. 355 of 1988 for declaration of ownership and possession of the suit land Survey No. 77 admeasuring 23 acres 5 guntha situated at village Anegaon, Taluka Kaij, District Beed which came to be dismissed on 30/10/1990.

3. Regular Civil Appeal No. 85 of 1990 by the respondents

came to be allowed by the judgment dated 11/09/2000 which was subject matter of the Second Appeal No. 112 of 2001 before the High Court at the behest of petitioners which was dismissed on 26/08/2011. The judgment of the first appellate Court was further upheld in S.L.P. No. 30322 of 2011 which came to be dismissed by an order dated 18/11/2011.

4. As the suit of the respondents was decreed, they filed Regular Darkhast No. 7 of 2001 for possession of the suit property. In the said Darkhast, the petitioners-judgment debtors moved an application Exhibit-47 objecting the execution proceedings under the provisions of Section 21(3) read with Section 47, Order 21 Rule 98, 99 and 101 of Code of Civil Procedure. The nature of objection raised in the application Exhibit-47 was that, in view of provisions of Bombay Hereditary Officers Act, Section 4 of the Bombay Village Watan Abolition Act, decree is not executable. It is also prayed that in view of existence of sale deed in favour of the plaintiffs in relation to the land in question dated 15/01/1982 which was executed by Vatsalabai w/o Jawyant Kulkarni, original allottee of the land, the decree is not executable. In addition to above, it is further urged that the above referred facts could be noticed after passing of judgment in civil suit and as such, the objection to the execution was filed. According to him, the issues raised in the objection goes to the root

of the matter. Learned Executing Court by his order dated 02/08/2014 rejected the objection and ordered issuance of possession warrant. As such, writ petition.

5. Mr. Salunke, learned Counsel for the petitioners-judgment debtors would urge that the sale deed dated 15/01/1982 was discovered subsequent to passing of the decree in question and as such, said issue could not be raised in view of provisions of Section 47, Section 21 and Order 21 Rule 98, 99 and 101 of Code of Civil Procedure. He would further urge that the suit at the behest of the respondents-plaintiffs was not maintainable as land was originally allotted to Jaywant Kulkarni, after his death his wife Vatsalabai become owner and said Vatsalabai had executed sale deed in favour of his clients in February 1982.

6. In addition to above, he would further urge that in view of provisions of Section 2 of Bombay Village Watan Abolition Act, the respondents cannot be termed as authorized holder and as such, no locus to file suit in question, as such, submits that the decree was obtained by fraud by the respondents.

7. Mr. Deshpande, learned Counsel for the respondents-decree holders would urge that the issue as regards watan inam land

was neither raised nor pleaded by the petitioners any time in the suit. In addition to above, he has placed reliance upon the findings of fraud recorded by the Executing Court in the order impugned. In addition to above, he would urge that objection is rightly rejected by the Executing Court as claim of the petitioners that they become owner of the land in question by virtue of sale deed dated 15/01/1982 is hit by the provisions of sub section (3) of Section 5 of the Bombay Village Watan Abolition Act.

8. Having considered the rival contentions of the parties, it is required to be noted that the decree in question is already confirmed upto the Apex Court. It is not in dispute that Jaywant Kulkarni was owner of the land in question and after his death, Vatsalabai holding the same property. It appears that Vatsalabai's sister Malanbai had a son by name Devidas, who was sought to be adopted by Vatsalabai by moving proposal to revenue authorities. However, the said proposal was dismissed for want of prosecution.

9. It is also required to be noted that the issue about jurisdiction, which is sought to be raised now was never raised either in Regular Civil Suit No. 355 of 1982 or in Regular Civil Appeal No. 85 of 1990 by present petitioners-judgment debtors. It is not in dispute that Jaywant Kulkarni was holding Survey No. 77 from village

Anegaon and after his death, Vatsalabai was holding the said land. As stated earlier, the proposal for adoption of Devidas, son of Malanbai-sister of Sitabai was never taken to its logical end.

10. The Executing Court noted that the objection raised by the present petitioners were already considered and decided by the first appellate Court in Regular Civil Appeal No. 85 of 1990 which was upheld by the Apex Court. According to the Executing Court, the issue of jurisdiction as is sought to be raised was already answered in favour of the decree holders.

11. It is required to be noted that the claim of the judgment debtors about the transaction dated 15/01/1982 was also looked into on merits in Regular Civil Appeal No. 85 of 1990 wherein the finding as regards status of respondents/plaintiffs was decided as a successor of deceased Vatsalabai.

12. It is settled law that if the decree passed in the civil suit has attained finality as in the present case upto Apex Court, the objection of the judgment debtors to the decree on the ground of jurisdiction is not maintainable in the execution proceedings. Admittedly, the present petitioners have not raised the said objection any time before and have rather contested the suit on merits.

13. But for raising an objection about watan land, that too in the execution proceedings, no material on record is brought so as to substantiate the said contentions. It is required to be noted that if the said contention of the petitioners that the land in question is watan land is accepted then their own sale deed dated 15/01/1982 is hit by provisions of Section 5(3) Bombay Village Watan Abolition Act.

14. The nature of objections as are raised by present petitioners appears to be with an intention to frustrate the claim for execution of the decree or delayed the same. The observations made by learned Executing Court about conduct of present petitioners not arguing the matter and seeking adjournments time and again.

15. The filing of frivolous objection like present one takes me to only conclusion that the petitioners somehow wanted to prolong the present proceedings.

16. With above observations, the writ petition stands dismissed. The Executing Court is directed to expedite the execution.

[N.W. SAMBRE, J.]