

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

WRIT PETITION NO.10459 OF 2015

1. Bhagat Ravalmal Balani,
Age 51 years, Occu.Business
and Agriculture,
R/o 20, Saint Rajaram Nagar,
Jalgaon, Taluka and Dist. Jalgaon
 2. Vinod @ Subhash Santomal Khatri,
Age 47 years, Occu. Business,
R/o 1, Bapu Colony, Amraoti,
Taluka and District Amraoti
 3. Mukesh Govindram Khatri,
Age 42 years, Occu. Business,
R/o 1, Bapu Colony, Amraoti,
Taluka and Dist. Amraoti
- .. Petitioners

Versus

1. M/s Raj & Company Jalgaon
Through Suresh Kesharlal Pande,
Age 64 years, Occu. Business,
R/o 346, Navi Peh, Jalgaon,
Taluka and District Jalgaon
2. Ashok Kesharlal Pande,
(since deceased, through his
legal heirs)
- 2-a Rajani Ashok Pande,
Age 54 years, Occu. Household
- 2-b Priyanka Ashok Pande,
Age 34 years, Occu. Household
- 2-c Neha Ashok Pande,
Age 26 years, Occu. Household,

All R/o Plot No.43/1, in front of
Rotary Bhawan, Mahabal Colony,
Jalgaon, Dist. Jalgaon
3. Kunal Prakash Pande,
Age 26 years, Occu. Nil,
R/o Block No.5, Vikas Apartment,
Yashwant Colony, Ring Road,
Jalgaon, District Jalgaon

4. Lokesh Prakash Pande,
Age 25 years, Occu. Nil,
R/o As above
5. Smt. Sunita Prakash Pande,
Age 47 years, Occu. Business,
R/o As above
6. Smt. Sarlabai Kesharlal Pande,
Age 47 years, Occu. Business,
R/o As above

..Respondents

Mr G.V. Wani, Advocate for petitioners
Mr S.G. Chapalgaonkar, Advocate for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 1st December 2015

PER COURT

Heard.

2. In Regular Civil Suit No.95 of 2008, a compromise decree came to be passed of which execution is sought by virtue of Regular Darkhast No.485 of 2010.

3. The petitioners, the purchasers of the part of the suit property preferred various applications before the executing Court in Regular Darkhast amongst other for framing of issues which will be required to be decided by the executing Court. After considering Exhibit 138 and Exhibit 139, the learned Civil Judge, Junior Division, Jalgaon by order dated 29th April 2015 has framed two issues, which read thus :

“a) Do the D.Hs. Prove that sale-deed dtd. 08/04/2010 does not create any legal right in favour of Bhagat Balani, Vinod Khatri and Mukesh Khatri ?

b) Do the D.Hs. Prove that Bhagat Balani, Vinod Khatri and Mukesh Khatri have encroached 360 sq. ft. of the portion of the D.H. ? If yes, what is the relief ?”

4. Mr Wani, learned Counsel for the petitioners would urge that the issue No. (a) cannot be gone into, particularly in view of Clause 10 of the compromise decree, as according to him, putting embargo on a party to transfer the property, is hit by statutory embargo under Section 10 of the Transfer of Property Act. In addition, he would urge that in spite of clarification given by first appellate Court, while deciding the First Appeal No.2303 of 2010 on 5th July 2011, the learned executing Court has restricted itself qua the above referred two issues without taking into account the applications, through which the issues were sought to be framed and canvassed.

5. While opposing the claim, Mr Chapalgaonkar, learned Counsel for respondent No.1 would urge that in view of the High Court's order in First Appeal, the Court below was right in framing two issues which goes to the root of the matter. According to him, the execution is protracted since 2010 by the petitioners by moving applications. According to him, the present petition is devoid of merits and is liable to be rejected.

6. Prima facie, it is noticed that upon perusal of Clause 10 of compromise decree, if assessed in the light of the issue No. (a) framed, the same, in my opinion is hit by Section 10 of the Transfer of

Property Act, as no such embargo on the right of the parties can be put, as is sought in Clause 10. Apart from above, the other issues sought to be raised in the petition in the interest of the applicants are not dealt with or touched before rejecting the same. The Court should have applied its mind to the said facts and the issues raised and then decide the same in accordance with law.

7. Prima facie, I am of the opinion that the order dated 29th April 2015 has been passed without considering the scope, as is given by the High Court, while deciding the First Appeal No.2303 of 2010 on 5th July 2011, particularly in the light of observations made in paragraph 3 of the said judgment.

8. In view of above, the impugned order dated 29th April 2015 passed below Exhs.138 and 139 in R.D. No.485 of 2010, by the Judicial Magistrate, First Class, Jalgaon is quashed and set aside. The main suit is restored to the file of Judicial Magistrate, First Class, Jalgaon, who shall decide the claim put forth by the petitioners in the matter of framing of issues, including the Applications Exhibit 138 and Exhibit 139 and shall deal with the same by passing appropriate orders.

9. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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