IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4782 OF 2014

Sandip Vijay Divate .. Petitioner

Versus

Shri. Sayyad Haidar Nadaf
(Since deceased through L.R's.)
Abdul Gani Sayyad Nadaf
(Since deceased through L. R's.)
Yasin Abdul Gani Nadaf and others .. Respondents

Shri. Akshay P. Shinde, for the Petitioner.

Shri. Bhushan Walimbe, for the Respondent Nos.1A-1 to 1A-3, 1B to 1D.

CORAM : R.M. SAVANT, J.
DATE : 12th MARCH, 2015

P.C.

1. The Writ Jurisdiction of this Court is invoked against the order dated 12.02.2014 passed by the Learned Joint Civil Judge, Junior Division, Shirala, by which order the application Exh.100 filed by the Petitioner which is referable to Order XXI Rule 97 of the CPC came to be rejected.

2. The case of the Applicant that he was in long standing possession of the suit property and that since he was not a party to the suit and is therefore, not bound by the decree was not countenanced by the Executing Court. The Executing Court tested the case of the Petitioner in

respect of his claim of being in long standing possession of the property. The Executing Court observed that in the application the Petitioner has not mentioned as to when he has come in possession and who has put him in possession. The Applicant thereafter sought to trace his possession through one Nitin and Atul Nalawade who he claimed put him in possession. The Trial Court as can be seen from the impugned order has also tested the said case of the Petitioner. The Trial Court adverted to the adjudication of Regular Civil Suit No.6 of 2008 which was filed by the said Nitin and Atul Nalawade and in which a finding was returned by the Trial Court that they are not in possession. The Executing Court was of the view that in the light of the said finding of the Trial Court in another suit i.e. suit filed by the said Nitin and Atul Nalawade, the case of the Petitioner that he was in possession by Nitin and Atul Nalawade could not be accepted as they themselves were held to be not in possession. The Trial Court therefore did not find any substance in the application Exh.100 filed by the Petitioner, which as indicated above was referable to Order XXI Rule 97 of the CPC. Having regard to the aforestated facts the impugned order passed by the Trial Court rejecting the application Exh.100 cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]