

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1834 OF 2013

Laxman Vithoba Chavan

...Petitioner

vs.

Gulab Laxman Chavan

since deceased through legal heirs

Smt. Sulekha Gulab Chavan

since deceased through legal heirs

Sou.Manisha Sampat Suryawanshi & ors.

...Respondents

Mr. Akshay Shinde i/b. A. M. Kulkarni for the Petitioner.

Mr. Umesh R.Mankapure for the Respondent No.1A and 1B.

CORAM : R. M. SAVANT, J.

DATE : 3rd MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 30th March, 2012 passed by the learned Civil Judge, Junior Division, Jath, District Sangli. By the said order, the Execution Proceeding being Regular Darkhast No.36/2005 came to be dismissed. The dismissal is on the ground that the Decree Holder having alienated the suit properties post the decree, there is nothing left to be executed in so far as the decree is concerned. The suit in question being Special Civil Suit No.48/1991 was decreed on 25th September, 1996. The said decree was one for declaration and injunction and the suit property was house no.524 with the appurtenant open space. The suit property is covered by CTS Nos.288 and 289. After the decree came to be passed,

the Decree Holder executed the sale deed dated 22nd July, 2004 in favour of Rajni Jadhav who is the daughter of his second wife Akkatai, hence, what remained with the Decree Holder was 8 Ane share in the said suit property. In so far as the remaining 8 Ane share is concerned, the Decree Holder executed a consent deed dated 29th December, 2002 in favour of the wife of the Judgment Debtor No.1 and her son. The Judgment Debtor No.1 was the son of the Decree Holder from the first wife. The said heirs of the Judgment Debtor No.1 further alienated the suit property in favour of one Hanmant Bhosale by a registered sale deed which is probably in view of the said alienation by the heirs of the Judgment Debtor No.1 that the Execution Proceeding was pursued. So far as the said documents are concerned, the concerned witnesses were examined. In so far as the consent deed is concerned, the scribe one Madhukar Kulkarni (JDW-6) and the other two witnesses i.e. one Mansoor Khatib and one Sunil Chavan were examined. The said documents being proved, the Executing Court came to a conclusion that in view of the alienation subsequent to the decree, the executing proceedings have become infructuous as there is nothing remaining to be executed in so far as the decree is concerned.

2] In my view, having regard to the reasons mentioned in the impugned order as also having regard to the facts as aforesaid, no

case for interference in the writ jurisdiction of this Court is made out.
The Writ Petition is, accordingly, dismissed.

(R. M. SAVANT, J.)

wadhwa