

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

WRIT PETITION (ST)NO.3931 OF 2015

Sonu Bandugir Gosavi
since deceased through his Lrs
Kondabai Sonu Gosavi & Ors.

...Petitioners

vs.

Arun Dnyanoba Gosavi & Ors.

...Respondents

Mr. Dilip Bodake for the Petitioners.

CORAM : R. M. SAVANT, J.

DATE : 11th MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 10th November, 2014 passed by the learned Joint Civil Judge, Junior Division, Ghodnadi (Shirur) by which order the application Exhibit 51 filed by the Judgment Debtor for permission to cross examine the Court Commissioner came to be rejected.

2] The suit in question being Regular Civil Suit No.243/1986 which was filed for specific performance came to be decreed by the Trial Court by its judgment and order dated 28th February, 1994. The Trial Court directed the Defendant No.1, whose heir is the present Judgment Debtor who has filed the application in question, to execute the sale deed of 1 H 7 Ares of the land in favour of the

Plaintiff No.1 and execute the sale deed of 1 H and 6 Ares of the land in favour of the Plaintiff No.2, in default, the Plaintiffs were entitled to file an application for appointment of the Commissioner for execution of the said sale deed. The said Decree passed by the Trial Court was challenged by the Defendants by filing the Civil Appeal No.316/1994. The said Civil Appeal came to be dismissed for default on 21st February, 2000 and it appears that the said Appeal has not been restored and hence, the Decree of specific performance has become final and binding.

3] The Plaintiffs i.e. the Decree Holders put the said Decree in execution by filing Regular Darkhast No.32/1994. The Commissioner who was appointed for execution of the sale deeds applied to the Sub-Divisional Officer for seeking permission to execute the sale deeds in favour of each of the Plaintiffs i.e. Plaintiff Nos.1 and 2 to the extent of the land mentioned in the Decree. It seems that the permission came to be granted by the Sub-Divisional Officer Maval vide order dated 13th March, 2013 and, hence, the execution proceedings are now at the stage where the sale deeds have to be executed in favour of the Plaintiff Nos.1 and 2. The Judgment Debtor i.e. the Petitioner herein has raised an objection on the ground that the notice under Order XXI Rule 22 of the Code of Civil

Procedure was required to be issued and that though the land to be conveyed to each of the Plaintiffs totally comes to 2 H and 13 Ares, the permission is granted in respect of 2 H and 50 Ares and, therefore, the execution of the sale deeds which is beyond the Decree passed in favour of the Plaintiff could not be done. The Petitioner i.e. the Judgment Debtor sought the cross examination of the Court Commissioner on the aspect of the sale deed to be executed in favour of the Plaintiffs.

4] The Executing Court considered the said application Exhibit 51 and as indicated above, has by the impugned order dated 10th November, 2014 rejected the same. In so far as the point as regards the notice to be issued under Order XXI Rule 22 is concerned, the Executing Court held that since the execution proceedings have been filed immediately after passing of the decree in the year 1994, Order XXI Rule 22 is not attracted. In so far as the permission granted by the Sub-Divisional Officer is concerned, the Executing Court held that the said permission is being mis-interpreted by the Judgment Debtor and in fact permission is granted only for the total land of 2 H and 13 Ares. The Executing Court also observed that sale deeds cannot be executed beyond the area which has been mentioned in the Decree and accordingly rejected the said objection also. In my view, having

regard to the reasons mentioned by the Executing Court in the impugned order, 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