

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

WRIT PETITION (STAMP) NO.6529 OF 2015

Smt. Suman Shridhar Mhatre and others .. Petitioners

Versus

Shri. Murlidhar Mahadev Mhatre and others .. Respondents

Shri. K. S. Dewal i/by Shri. J. M. Joshi, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 09th MARCH, 2015

PC.

1. Not on board. Papers produced for seeking urgent orders.
2. The order dated 06.02.2015 rejecting the application Exh.82 filed by the heirs of the original Judgment Debtor No.1, objecting to the execution of the decree under Section 47 of the CPC passed by the Learned Civil Judge, Junior Division, Pen is taken exception to by way of the above Petition.
3. The decree in question has been passed by the Trial Court as long back as on 29th February, 1980. The Plaintiff was held entitled to ¼ share in the agricultural lands as also the house property. It seems that the decree though confirmed by the Lower Appellate Court came to be slightly modified by the Lower Appellate Court. The modified decree passed by the Lower appellate Court came to be challenged in this Court by way of

Second Appeal being Second Appeal No.381 of 1983. The said Second Appeal came to be admitted and has been disposed of by judgment and order dated 16th July, 2004 passed by a Learned Single Judge of this Court.

4. In the context of the present Petition, suffice it to state that the decree passed by the Courts below was confirmed by this Court in the Second Appeal, however this Court modified the decree to the extent mentioned in the operative part of the judgment and order dated 16th July, 2004. However, the Plaintiff was held entitled to $\frac{1}{4}$ share in the properties described in paragraphs 1(A), 1(B) and 1(D). The said decree was put in execution by the Decree Holder by filing Regular Darkhast No.4 of 2005. It seems that during the pendency of the said Darkhast Proceedings the original Judgment Debtor No.1 Shri. Shridhar Dharma Mhatre expired and an application Exh.20 to bring his heirs on record was filed by the Decree Holders. It seems that an application was also filed for appointment of the Court Commissioner as the decree in question also involves house property. The first application filed for appointment of Court Commissioner came to be rejected by the Executing Court on the ground that the application Exh.20 for bringing the heirs of Judgment Debtor on record was pending.

5. The Decree Holder it seems thereafter filed another application Exh.47. The Executing Court having regard to the decree to be

executed deemed it appropriate to appoint Court Commissioner by its order dated 22.07.2010, a Learned advocate practicing in the Trial Court was accordingly appointed as Court Commissioner to suggest partition of the house property. The heirs of the Judgment Debtor No.1 were brought on record thereafter on 29.11.2013. The said heirs have accordingly filed the instant application Exh.82 objecting to the execution of the decree by invoking Section 47 of the CPC. The objection is on the ground that though the decree is in respect of house property No.49, it is being executed against house property No.67/1, 67/2, 67/3 & 67/4 and the Court Commissioner was also appointed prior to the heirs being brought on record. The Executing Court did not countenance both the objections. In so far as there being variance in the description of the house property is concerned, the Executing Court held that the heirs of the Judgment Debtor No.1 have not placed any material on record to show that the house property No. 67/1, 67/2, 67/3 & 67/4 is a different property, against which the decree is sought to be executed. In so far as the appointment of the Court Commissioner is concerned, the Executing Court held that though the said appointment was prior to the heirs being brought on record the Court Commissioner had issued notices to the heirs to remain present on site on the date he was to visit the site. The said notices were not accepted by the heirs of the Judgment Debtor No.1. The Executing

Court also held that since the heirs of the Judgment Debtor No.1 are being heard in the instant application the objection raised by them is bereft of any merit.

6. It is required to be noted that the original decree passed by the Trial Court was in the year 1980. This Court had modified the decree by its judgment and order dated 16th July, 2004 rendered by a Learned Single Judge of this Court in Second Appeal No.381 of 1983 filed by the Judgment Debtor No.1. Hence, the decree is awaiting execution for the last more than 30 years. The heirs of the Judgment Debtor No.1 are claiming to be in possession of the property against which the decree is sought to be executed on the basis that they are claiming through the Judgment Debtor No.1. The Trial Court in the said circumstances has held that the heirs of the Judgment Debtor No.1 would be equally bound by the decree and cannot question it on the ground that the decree is sought to be executed against a different property. The Trial Court in my view was right in observing that the instant application is another attempt by the Judgment Debtor to stall the execution of the decree which has been passed initially as long back as in the year 1980. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]