

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

WRIT PETITION NO.5752 OF 2014

Smt.anjanabai kashinath Pawar and anr. : Petitioners
versus
Smt. Chandrabhagabai Bapu Gite @
Chandrabhagabai Kashinath Pawar and ors. : Respondents

Mr. Prashant D Patil for the Petitioners
Mr. Nitesh V Bhutekar for the Respondent Nos.1 to 6

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

P.C.

1 The order dated 10/04/2014 passed by the learned 2nd Joint Civil Judge Junior Division, Nashik Road, Nashik directing the parties to lead evidence is taken exception to by way of the above Writ Petition.

2 The said order has been passed in Regular Darkhast No.14 of 2003 filed by the Petitioners – original Decree Holders. The decree in question is one for partition and possession which has been confirmed right up to this Court as the Appeal being Second Appeal No.625 of 2004 filed by the Judgment Debtors came to be dismissed by a learned Single Judge of this court on 23/6/2004. The Respondent Nos.1 to 6 are the proponents of the Application (Exhibit 83) which they have filed invoking Order XXI Rules 91, 92 and 97 of the Code of Civil Procedure thereby raising an objection to the execution proceedings. The Respondent Nos.1 to 6 are the original Judgment Debtors Nos. 1 to 6.

However, it appears that the Judgment Debtor No.2A one Chhaya Vasant Pawar had also filed an Application (Exhibit 90) objecting to the execution of the decree on the ground that the said decree has been obtained by fraud. The said objection has been rejected by the Executing Court by its order dated 1/4/2014 and the Executing Court has adverted to the fact that the decree in question has been confirmed right upto this Court and that the said objector i.e. the Judgment Debtor No.2A had never raised any objection on the ground of fraud earlier.

3 The impugned order, in so far as its directing the parties to lead evidence in so far as the Application (Exhibit 83) is concerned, is challenged on the ground that the Trial Court having rejected the said Application (Exhibit 90) could not have directed the parties thereafter to lead evidence in so far as the Application (Exhibit 83) is concerned which has been filed by another set of Judgment Debtors which included the Judgment Debtor No.2A. Upon this the learned counsel appearing on behalf of the Respondent Nos.1 to 6 states that the said Application (Exhibit 83) is founded on different facts alleging fraud in so far as the decree is concerned.

4 In my view, it is not necessary for this Court to enter into the debate as to whether the Application (Exhibit 83) could have been rejected on the basis of the order dated 1/4/2014 passed on the Application (Exhibit 90).

It would be open for the Petitioners to oppose the said Application (Exhibit 83) on the basis of the fact that the decree has been confirmed right upto this Court and thereafter the objection raised by the Judgment Debtor No.2A i.e. the Applicant in Application (Exhibit 90) has been rejected by the Trial Court by the order dated 1/4/2014. Only direction that can be issued is to direct the Executing court to hear and decide the said Application (Exhibit 83) expeditiously. The Executing Court is therefore directed that having regard to the fact that the decree has been confirmed right upto this Court as long as back in the year 2004, the Application (Exhibit 83) to be heard and decided latest by 15/4/2015 by giving proper opportunity to the parties. Parties to appear before the Trial Court on 20/01/2015. Needless to state that the contentions of the parties are kept open for being urged before the Trial Court. With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]