

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 493 OF 2015

(Sou. Ratanbai Eknath Bhosale
and others

Appellants

versus

Shri Baban Kashinath Sarode
and others

Respondents)

Mr. Jaydeep S. Deo, Advocate for appellants.
Mr. Dilip Bodake, Advocate, for Respondents

CORAM : R.K.Deshpande, J.
DATED : 8th JULY, 2015.

P.C.

The executing Court has rejected the objection raised by the appellants to the executability of a decree passed in Regular Civil Suit No. 58 of 1994, on 18.09.1997. The decree was for partition and separate possession. For execution of this decree, Regular Darkhast No. 20 of 2001 was filed. The appellants claimed that they are the sisters of the parties in the Regular Civil Suit No. 58 of 1994. They have right to succeed to the interest in the share of the father in the partition of the suit property. The objection was rejected by the

executing Court and Civil Appeal No. 494 of 2014 has also been dismissed on 29.04.2015. Hence, this second appeal against the concurrent findings of fact.

It is not in dispute that the appellants were not the party in Regular Civil Suit No. 58 of 1994 and they were not claiming to be in possession of the suit property. In view of this, the question of taking objection for execution of decree under Order XXI, Rule 97 of C.P.C. by them does not at all arise. Apart from this, on earlier occasion, the same objections were rejected and the decision of this Court granting opportunity to the appellant to prosecute the other remedy passed in Writ Petition No. 560 of 2009 on 30th July, 2013, has attained the finality. The appellants had filed Regular Civil Suit No. 79 of 2005 for claiming the share in the property in the hands of their father Kashiram, which is dismissed in default.

The learned counsel for the appellants submits that in view of the amended provision of Section 6 of the Hindu Succession Act, the plaintiffs, being the daughters, have share equal to the other coparcener in the property. However, the Regular Civil Suit No. 79 of 2005 was not amended and it is already dismissed in default.

In view of this, this second appeal is nothing but an abuse of process of the court. The same is, therefore, dismissed. However, no order as to cost.

(R.K.DESHPANDE, J.)

Rvjalit