

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2041 OF 2014

Ratanlal Girdharilal Agrawal

-vs-

Abdul Sattar S/o Abdul Gani

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M. G. Sarda, Advocate for petitioner.

Shri J. B. Gandhi, Advocate for respondent.

CORAM : A.S.CHANDURKAR J.

DATE : FEBRUARY 16, 2015.

Challenge in the present petition is to the order dated 13/02/2014 framing points to be decided in the objection raised by the petitioner under Order 21 Rule 97 of the Code of Civil Procedure, 1908 in execution proceedings filed by the decree holder.

The petitioner claims to be owner of land admeasuring 2 Acres 25 gunthas which is claimed to have been purchased from the successor in title of Khairunisa. In R.C.S.No.70 of 1970 which was a suit for declaration and recovery of possession, the trial Court on 31/08/2009 directed the defendants therein to hand over possession of field Survey No.131 admeasuring 5 Acres and 9 gunthas to the plaintiff. The present petitioner claims to have purchased half portion of land from said field Survey No.131. In the execution proceedings, the petitioner obstructed the decree under the provisions of Order-21 Rule 97 of the Code of Civil Procedure. In the said proceedings the parties were

directed to lead evidence. By the impugned order, points for determination have been framed to enable parties to lead evidence.

Shri Sarda, learned counsel appearing for the petitioner submitted that in absence of Khairunisa, her share in the suit land could not have been decided. He therefore submitted that point No.3 as framed by the executive Court deserves to be deleted.

Learned counsel for the respondent, on the other hand submitted that in view of provisions of Order 21 Rule 101 of the Code, right, title and interest of the petitioner is required to be decided and hence said point has been rightly framed.

The earlier adjudication in R.C.S.No.70 of 1970 wherein it was held that Khairunisa had half share is not in dispute. It is to be noted that the executing Court called upon the parties to lead evidence in support of their cases and said order had been challenged in W.P. No.1084 of 2011. In the order dated 08/02/2012 passed in said Writ Petition it has been observed that share allotted to Khairunisa will have to be determined.

In this background, the executing Court has framed five points for determination. While passing the impugned order, the executing Court has found it necessary to determine the share of Khairunisa as the petitioner claims title from persons in favour of whom she had alienated part of the property. In view of the aforesaid fact, at this interlocutory stage, I do not find that any case has been made out for deleting point No.3 as framed by the executing Court. Objection of the petitioner that such share of Khairunsa cannot be decided in her absence is kept open for

its due consideration by the executing Court.

In view of aforesaid, the following order is passed :

- i) The impugned order dated 27/02/2014 does not call for any interference.
- ii) It is clarified that the executing Court shall consider the objections raised by the present petitioner with regard to the adjudication of share of Khairunisa while deciding point No.3
- iii) It will be open for the petitioner to challenge said findings in case the executing Court passes any order adverse to his interest. Similarly, contentions of decree-holder are also kept open.
- iv) Subject to what is stated above, Writ Petition is disposed of with no order as to costs.

JUDGE