

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

921 WRIT PETITION NO. 763 OF 2015

PANDURANG SAVLARAM BACHKAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Deshmukh Ravindra M.
AGP for Respondents 1 & 2 : S.R. Yadav
Advocate for Respondents 3,4,5 & 7 : C.V. Thombre
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CORAM : T.V. NALAWADE, J.
DATED : 29th September, 2016.

ORDER :

1. The petition is filed to challenge the orders made by Executing Court in Darkhast No. 28/2013. Civil Judge, Junior Division, Ambad has referred the matter under section 54 of Civil Procedure Code to revenue authority for effecting the partition as per the decree given by the Civil Court. Both the sides are heard.

2. The submissions made and the record show that suit was filed by decree holders against Vasantabai Kulkarni and Kanta Jagtap. It is the case of plaintiffs that Tukaram, deceased husband of defendant no. 1 - Vasantabai was not real owner and property was purchased by the father of plaintiffs in the name of Tukaram by selling the ancestral property by the father of

plaintiffs. Kanta was purchaser from Vasantabai and the property was entered in the name of Vasantabai after the death of Tukaram. The years are not mentioned in the plaint. It appears that Vasantabai did not appear in the suit and exparte order was made. Kanta did not filed written statement and so, virtually exparte decree was given as claimed by the plaintiffs and each plaintiff is given share in the property as per their case.

3. The submissions made show that when the suit was filed in the year 2010, the suit property was purchased by the present petitioners under sale deed dated 7.6.2011. It is the case of petitioners that only when they received the notice issued by the revenue authority with regard to handing over of the possession, they realized that such decree was there. Then the application was moved under Order 21, Rule 97 of C.P.C. That application is still pending. But the order made by the Executing Court for referring the matter under section 54 of C.P.C. is challenged in the present proceeding. Aforesaid circumstances show that everything is misconceived. If there was such decree and the property is purchased by the petitioners from Kanta, original defendant No. 2, they could have challenged the decision of the suit No. 160/2010 by filing appeal and in that appeal, they could have obtained some relief. When

the decree has become final and when they are saying that they are standing in the shoes of Kanta, no Court would give any relief in their favour even if exhaustive inquiry is conducted as contemplated for deciding objection under Order 21, Rule 97 of C.P.C. In view of these circumstances, this Court holds that nothing can be achieved in the present matter. The learned counsel for petitioners placed reliance on the cases reported as **2013 (6) ALL MR 342 [Kuber Housing Investment and Finance Private Limited Vs. TCI Finance Limited & Ors.]**, **(2003) 12 Supreme Court Cases 231 [Cooperative Co. Ltd. Vs. State of U.P. and Ors.]**, **(2003) 12 Supreme Court Cases 219 [Ashan Devi and Anr. Vs. Phulwasi Devi and Ors.]**, **2015 (4) ALL MR 854 [Ballappa Sidhappa Guddodagi & Ors. Vs. Smt. Bhagavva Nagappa Magdum (D) thr. Legal Heirs and Ors.]** and **2006 (4) Mh.L.J. 734 [S. Rajeshwari Vs. S.N. Kulasekaran and Ors.]**. There is no dispute over the propositions made in aforesaid cases that the objection needs to be decided on merits. The present matter is such that such objection has no force and nothing can be achieved and further, the order made under section 54 of C.P.C. is challenged, which is not actually order as such order follows the decree.

4. In the result, petition stands dismissed. In view of peculiar circumstances of the case, interim relief granted by this Court is continued for further fifteen (15) days. Amount already deposited in this Court by the petitioners is to be sent to Executing Court and that can be considered when the Court will be considering the rights of the decree holders to get the mesne profits.

[T.V. NALAWADE, J.]

ssc/