

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 3636 OF 2016

1] Farookh Adarji Fanibandha
deceased - through legal heirs
A] Smt. Meera Farookh Fanibandha and others ...Petitioners

Versus

Ushadevi Prabhakar Rai and others ...Respondents

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Mr. S. P. Brahme, Advocate for petitioners
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CORAM : SUNIL P. DESHMUKH, J.

DATE : 31st MARCH, 2016

ORDER :

1. Heard learned counsel for the petitioners.
2. Petitioners claiming to be legal heirs of deceased defendant purportedly aggrieved by two orders, one dated 19th October, 2015 and other dated 22nd February, 2016 on Exhibit-119 and Exhibit-120 respectively, passed by Joint Civil Judge, Junior Division, Jalgaon in Regular Darkhast No. 156 of 2012, thereby rejecting both the applications seeking issuance of notice to legal heirs of deceased defendant and for dismissing the darkhast, respectively, are before this court.

3. It appears that the petitioners are claiming that they are legal heirs of deceased judgment debtor No.1 Farookh Adarji Fanibandha. The petition is moved by original judgment debtors, who also claim to be the original legal heirs of deceased and other judgment debtors namely Farookh Adaraji Fanibandha.

4. While rejecting applications (Exhibit-119 and 120), the executing court has observed that the persons who are successors in possession, are brought on record as legal heirs and in the circumstances other persons, to whom notices are sought, would not be necessary parties.

5. Looking at that there was substance in the contentions of the decree holder, the executing court had called back the notices issued to all the legal heirs and also dismissed the application of defendants requesting dismissal of the darkhast for want of those persons on record.

6. The decree holders had filed say to the applications referring to the factual aspects and upon that, the executing court had considered that the legal heirs in whose possession the property was, are brought on record and under the

circumstances, it would not be necessary to issue notices to other legal heirs.

7. The executing court had also observed that the citation relied upon on behalf of the petitioners, may not be able to hold field in the present situation referring to that in said citation the persons who were in possession, were not brought on record. The executing court has considered material and relevant aspects and held that it is not a case that the petitioners are in possession of the property and as such, rejected the applications.

8. There does not appear to be any error in the orders passed by the executing court. In the circumstances, there does not appear to be any substance in the writ petition.

9. As such, writ petition stands rejected.

(SUNIL P. DESHMUKH, J.)

sms