

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

**WRIT PETITION NO.3380 OF 2016**

Nimgir s/o Budhgir Gosavi,  
Died through L.Rs.  
Ravindra s/o Nimgir Gosavi & ors.                      ...      PETITIONERS

**VERSUS**

The State of Maharashtra & ors.                      ...      RESPONDENTS

.....  
Shri S.S. Choudhari, Advocate holding for  
Shri U.P. Giri, Advocate for petitioners  
Shri S.N. Kendre, A.G.P. for State  
Shri M.S. Mulkarni, Advocate for R.no.3  
.....

CORAM:      T.V. NALAWADE, J.

DATED:      30th August, 2016.

**ORAL ORDER :**

1.              This petition is filed to challenge the order made on Exh.1 and Exh.34 in regular Darkhast No.170/1974, which is pending before the Civil Judge, Junior Division, Jalgaon. Both the sides are heard.

2.              The submissions made on the record show that, the property involved in the litigation was owned by one Vishnu Naik,

who died in the year 1944, leaving behind his son Pandit and widow Radhabai. Radhabai died in the year 1989 and Pandit died in the year 1995. Radhabai had filed suit against Pandit for relief of partition and for challenging the sale deed executed by Pandit in respect of the property in which she was entitled to have share. The suit was decided in favour of Radhabai and that decree has become final. It is held that, the sale deed executed by Pandit is not binding on the share of Radhabai. However, the Apex Court has made it clear that there was right to Pandit to sell his own share and to that extent the purchaser can get property and during equitable partition, the portion of his share can be given to the purchaser.

3. Exh. 34 was filed by decree holder, respondent Nos.1 and 2, only to remind the Executing Court and to seek direction to expedite the matter of execution. After hearing both the sides, such directions are given by the Executing Court.

4. Thus, the point which was before the Executing Court, was very limited and the point was raised by the decree holder and not the judgment debtor, the purchaser from Pandit. In spite of this circumstance, the learned counsel for purchaser, present petitioners, submitted that the rights of Namdeo, who has come on record as legal representative of Pandit, need to be

decided and when the daughters of Pandit are brought on the record as legal representatives of Radhabai, the decree cannot be executed by Namdeo to get the share of Radhabai. This submission is not at all acceptable. When it is finally held that Pandit had no right to sell the share of Radhabai and when it is the case of Namdeo that he has become owner of share of Radhabai in view of Will executed by Radhabai in his favour on 10.7.1974, he is entitled to come on record as legal representative of Radhabai though he is shown as legal representative of Pandit. The submission made for petitioner is not acceptable as two times the party is not expected to come on record in different capacity in a case like present one. If Namdeo is entitled to act as legal representative of Radhabai, he is also entitled to get share of Pandit if some property is left after considering the right of purchaser. In view of this circumstance, this Court holds that there is no force and there is no substance in the petition. The petition is dismissed.

(T.V. NALAWADE, J.)