

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

924 WRIT PETITION NO. 5277 OF 2016
WITH CA/10306/2016 IN WP/5277/2016

PREMCHAND RAMPAL LOHIYA
VERSUS
LACHMANSING RAMPRASADSINGH HAJARI DIED LRS
RADHABAI LAXMANSINGH HAJARI AND OTHERS

Shri. N.B. Khandare, Advocate, for petitioner.

Shri. Subhash Lachmansing Hazari, party-in-person,
respondent No.1/2.

CORAM: T.V. NALAWADE, J.

DATE : 19th AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibits 139 and 141 filed in Regular Darkhast No.47/2012 presently pending in the Court of the Civil Judge, Senior Division, Ambajogai, District Beed. Heard learned counsel for the petitioner. The respondent, decree holder, party-in-person was heard.

2) The suit was filed by the respondent Lachmansing for possession against a partnership concern

and its partners. Rampal, father of the present petitioner, was also partner of this firm. Special Civil Suit No.37/1988 (old) (new No.81/1989) was decreed in favour of the respondent Lachmansing and that decision has become final. Decree of possession and reconveyance is given. Order is also made to propose the draft of reconveyance and that order was made in the year 2013. Then the present petitioner filed objection petition under provision of Order 21 Rule 97 of the Code of Civil Procedure. The trial Court made order on 17-1-2013 and held that the objection needs to be heard. The application at Exhibit 141 was filed by the objection petitioner and he submitted that all the legal representatives of Rampal need to be brought on the record as judgment debtors and he contended that the interests of the legal representatives may be adverse against him. He prayed for condonation of delay of 5 months caused to bring the legal representatives on the record. This application was opposed by other side by contending that delaying tactics were being played by the objection petitioner.

3) It is not disputed that the suit property was purchased in the name of partnership firm and the said transaction was challenged and the suit was filed not only against partnership firm but also against its two partners, who were on the record. Now, the objection petitioner wants to show that in the partition between the partners the property had come to the share of Rampal, father of the objection petitioner and as the successors of Rampal, the petitioner and others are entitled to obstruct the execution of the decree. The petitioner also wants to show that he has become owner due to adverse possession as only he has been enjoying the property.

4) The aforesaid contentions were not made by Rampal, father of the present petitioner. Rampal is dead and now first time son of Rampal is making such contention. It can be said that possession, if any of the objection petitioner was for Rampal if the property was really given to Rampal in the partition between the two partners. He cannot say that his possession was adverse. Whatever defences which were available to Rampal were taken by him in the suit and after considering those

defences decree was given against Rampal. This Court has no hesitation to observe that there is no independent right to the objection petitioner and by bringing legal representatives of Rampal on the record he wants to create more complications. Decree is given against the partnership concern and the sale deed was executed in favour of the partnership concern. In view of these circumstances, this Court holds that there are no merits in the present petition. It is only an attempt of son of Rampal to obstruct the things to protect the possession. Extraordinary jurisdiction cannot be used in favour of such person. In the result, the petition stands dismissed. Civil Application is disposed of.

Sd/-
(T.V. NALAWADE, J.)

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