

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

WRIT PETITION NO. 6766 OF 2016

Chabu Gopala Ingle

... Petitioner

Versus

Manjaram s/o Chandrabhan Ingle
Died by L.Rs.

1) Babasaheb s/o Manjaram Ingle & others ... Respondents

.....
Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for petitioner
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CORAM : SUNIL P. DESHMUKH, J.

DATE : 29th JUNE, 2016

ORDER :

1. Heard learned counsel for the petitioner.
2. Perused the impugned order.
3. An application Exhibit-137 purportedly pursuant to Order XXI Rule 97 of the Code of Civil Procedure, 1908 has been filed by judgment debtor in Regular Darkhast No. 1 of 1992, under which he sought stay to execution of decree in Regular Civil Suit No. 220 of 1981 and to delivery of possession. Said application has been rejected under

impugned order dated 17th June, 2016. The present petitioner who is judgment debtor in said Regular Darkhast is before this court, as he has been directed to deliver possession of the suit land to the decree holder and to re-transfer the same.

4. Regular civil appeal and second appeal preferred questioning decree passed against the present petitioner in Regular Civil Suit No. 220 of 1981 have already been dismissed including the Special Leave Petition before the Supreme Court, resulting into execution proceeding under Regular Darkhast No. 1 of 1992.

5. While the execution proceedings proceeded with and reached the stage of issuing possession warrant, none of the objections in the execution proceedings could be substantiated at any stage, including upto the Supreme Court.

6. After aforesaid events and litigation, in 2013 present petitioner – judgment debtor in aforesaid regular darkhast arising out of judgment and decree in Regular Civil Suit No. 220 of 1981, filed Regul Civil Suit No. 579 of 2013 for partition. It is in that context an application Exhibit-137 came to be moved under Order XXI Rule 97 of the Code of Civil Procedure as referred to herein above. The executing court

has taken stock of the situation as would be appearing in paragraphs No. 3, 4 and 5 of impugned order dated 17th June, 2016 which are reproduced herein below for ready reference.

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“ 3. Heard both learned advocates. On perusal of entire records it reveals that in RCS No. 220/1981 filed by present DH is decreed on 29/6/1982 and JD is directed to deliver the possession of the suit land to the DH and to re-transfer the suit land in favour of the DH. Thereafter first appeal, second appeal preferred by JD came to be dismissed and even Special Leave Petition is also dismissed. From passing of decree till dismissal of Special Leave Petition, it takes 15 years. Thereafter possession warrant came to be issued. Thereafter the objection raised by the JD came to be rejected and it remained confirmed upto Hon'ble Apex Court. Thereafter the son of JD raised rejection vide Exh.111. The said objection rejected by this court and remained infact upto second appellate court. Therefore on 27/06/2015 the JD filed present application and prayed for stay on execution till the disposal of RCS No.579/2013.

4. It is to be noted that RCS No.579/2013 is for partition and JD claimed that the present suit property is ancestral property, therefore, decree cannot be executed as the suit property is part of that suit. Entire record clearly reflects that since 1985 the DH is struggling for possession of the suit filed, he has successfully overcome of the legal proceeding upto Hon'ble Apex Court. Now the JD bringing before court new theory of another suit in order to obstruct the execution.

5. That in the original suit the JD has already admitted the ownership of DH over suit filed and accordingly decree of redemption and possession came to be passed. Now the JD trying to show that, the suit property is ancestral property and said issue is pending in another suit. In original suit this court already came to conclusion that the suit property is owned by DH.”

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7. Having regard to aforesaid, indulgence as is sought under the writ petition seeking interim relief of stay to the execution of decree and the possession warrant is untenable and not possible.

8. Writ petition, as such, is not being entertained and stands rejected.

9. At this stage, learned counsel for the petitioner requests for stay to the operation of this order. There was no interim relief granted in the present writ petition. As such, there is no question of staying any order of this court. The request is untenable and as such, is not considered.

10. It is made clear that in view of rejection of writ petition, no further indulgence is required.

(SUNIL P. DESHMUKH, J.)

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