

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

13 WRIT PETITION NO. 9754 OF 2016

ANKUSH PANDURANG BHALKE
VERSUS
DAMU GANPAT HIWALE AND OTHERS

Shri. Rajendrreea Deshmukkh, Advocate, for petitioner.

CORAM: T.V. NALAWADE, J.

DATE : 27 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the executing Court on Exhibit 198 filed in Regular Darkhast No.34/1993 which is pending in the Court of the Civil Judge, Junior Division, Jafrabad. Heard learned counsel for the petitioner.

2) The submissions made and the record show that decree of possession is given against the present petitioner in a suit filed in the year 1990 against him by the respondent. The execution petition came to be filed in the year 1993. Objection petition was filed by the present

petitioner in the execution proceeding on the ground that subsequently instituted suit like Suit No.9/2004 by the decree holder against some other persons for relief of injunction is dismissed by the Court and the first appellate Court has dismissed the appeal.

3) Learned counsel for the petitioner submitted that in the said suit the decree of the present suit was taken into consideration and the said Court refused to place reliance on the said decree by holding that the decree was probably obtained by fraud. However, the said suit was dismissed. The suit was filed only for relief of injunction and that too against different persons and not against the present decree holder. The submissions advanced by the learned counsel for the petitioner that in view of section 43 of the Evidence Act said decision needs to be considered in the present matter is not at all acceptable.

4) The decree against the present petitioner has attained finality. Learned counsel for the petitioner tried to rely on a case reported as **2009 (2) Mh.L.J. 745**

(Peoples Education Society v. Dr. Manohar Modi). In the said matter dispute of the trust was involved. Matters involving trust property are always of different nature and public nature is involved in such matters and for such matters other provision like section 42 of the Evidence Act needs to be applied. Thus the observations made by this Court in the reported case are of no use in the present matter. It is clear that the present petitioner is trying to do everything to see that execution of the decree is not made possible and some obstacle is created in the execution. This Court holds that interference by way of writ petition is not possible in such matters. The petition stands dismissed.

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

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