

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

WRIT PETITION NO. 10399 OF 2016

Atmaram Paruji Gadade

..PETITIONER

VERSUS

Pandurang Sujanrao Sonner and Others

..RESPONDENTS

....

Mr. V.V. Bhavthankar, Advocate for petitioner.

Mr. M.A. Kulkarni, Advocate for Respondent No.3.

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CORAM : T.V. NALAWADE, J.

DATED : 13th OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by learned Civil Judge, Junior Division, Ambajaoai in Regular Darkhast No. 20 of 2001. Heard both sides.

2. This Court asked the learned Counsel for petitioner to show this Court copy of judgment. This Court has gone through the judgment. Decree is given of possession on the basis of title. It is against the original defendants who were not the members of the joint Hindu family of the plaintiff. Present petitioner is contending that he is also a co-sharer alongwith plaintiff so he is entitled to get share in the property. The suit

itself was only for possession and it can be said that it was in the interest of all the members of the joint Hindu family. In spite of this circumstance, the present petitioner filed objection petition under Section 47 read with Order 21 Rule 97 of the Code of Civil Procedure.

3. It appears that the executing Court decided to give hearing to the petitioner when it was actually not necessary. When the decree of aforesaid nature is given, the co-sharer has no right to file proceeding under Section 47 read with Order 21 Rule 97 of the Code of Civil Procedure as they get the cause of action only when the decree holder gets the possession from third party. In such cases the co-sharers are entitled to file suit for partition and possession. Thus, the objection itself was misconceived. The Executing Court has now issued possession warrant and it can be said that in one way the present petitioner is helping the judgment debtor to protect the possession of the judgment debtor. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

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