

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

22 WRIT PETITION NO. 12194 OF 2016

TANAJI GANGARAM KOLHEWAD AND OTHERS
VERSUS
HANMANT PAPANNA KOLHEWAD AND OTHERS

Shri. Upendra B. Bilolikar, Advocate, for petitioners.

CORAM: T.V. NALAWADE, J.

DATE : 13 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 59 filed in Regular Civil Suit No.141/2014 which is pending before the learned Civil Judge Junior Division, Mukhed. Heard learned counsel for the petitioners.

2) The aforesaid application was filed by the petitioners under Order 21 Rule 29 of the Civil Procedure Code for granting stay to the execution of decree given in Regular Civil Suit No.41/2013. The submissions made show that Gangaram and Papanna were the real brothers. It appears that initially the property bearing Gat No.650

had come to the share of Gangaram and such entry was also made in revenue record. Similarly the property bearing Gat No.661 had come to the share of Papanna. Plaintiff of Regular Civil Suit No.41/2013 Gangabai is successor of Papanna. Defendant Hanmant is her brother. The suit was filed in respect of Gat No.650. When the suit was filed, Gat No.650 was standing in the name of family of Hanmant, whose predecessor was Papanna and the suit is decreed. She is given 1/5th share in this property.

3) Learned counsel for the petitioners submitted that due to some mistake committed by revenue authority subsequently Gat No.650 was entered in the name of family of Hanmant whose predecessor was Papanna and the property bearing Gat No.661 was entered in the name of present petitioner, successor of Gangaram. He showed to this Court one document signed by the successors of the two branches dated 14-7-2014 in which some successors of Papanna have admitted that there was such mistake committed in the revenue record. This step was taken only after giving of the decree in favour of Gangabai in Regular Civil Suit No.41/2013. Learned counsel for the

petitioners took this Court through the plaint of Regular Civil No.128 of 2014 which was filed by one Anteshwar, successor of Hanmant who was defendant in Regular Civil Suit No.41/2013. He submitted that decree was obtained in collusion in respect of Gat No.650 by the successors of Papanna and this decree is stayed in the suit bearing Regular Civil Suit No.141/2014. He submitted that similarly decree given in Regular Civil Suit No.41/2013 ought to have been stayed by the Court.

4) The aforesaid submission is not at all acceptable. The record shows that on the date of the suit filed by Gangabai, the property bearing Gat No.650 was standing in the names of successors of Papanna. Written Statement was filed by the successors to inform that they had developed the property, they had prepared plots and they have sold plots and even one plot was offered to Gangabai, plaintiff but she had refused to accept the offer. In view of these circumstances the suit came to be decreed. It is clear that subsequently Hanmant and his family created some record to create complications so that Gangabai is not able to get fruits of the decree. Step of the

present petitioner also can be said to be such a step. They had even prepared a document which could have created trouble for Gangabai. This is nothing but attempt to protract the execution of decree given in favour of Gangabai and it can be said that present petitioner is trying to help the judgment debtor of Regular Civil Suit No.41/2013. In view of the aforesaid circumstances this Court holds that there is no need even to issue notice to the decree holder of Regular Civil Suit No.41/2013 as it will cause harassment to her. The petition is dismissed. The observations made are for the present purpose.

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

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