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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 134 OF 2016

Shri Vasant Ramji Patil

.. Petitioner

Vs.

Sayyed Haider Nadaf

Deceased

Adbul Gani Sayyad Nadaf

Deceased through legal heirs

2a. Yasin Abdul Gani Nadaf and others

.. Respondents

Mr. Satyajeet A. Rajeshirke, Advocate for the Petitioner.

CORAM : R.G.KETKAR, J.

DATED : 07th JANUARY, 2016

P.C. :

. Heard Mr. Satyajeet A. Rajeshirke, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 11/03/2015 below Exhibits 152 and 156 as also the judgment and order dated 16/12/2015 below Exhibits 171 and 174 passed by the learned Civil Judge, Junior Division, Shirala in Regular Darkhast No. 15 of 2011. Application at Exhibit 152 was filed by the petitioner, hereinafter referred to as Vasant to bring him on record as legal representatives of Shevantabai Ramaji Patil, widow of Judgment Debtor No.1. The application at Exhibit 156 was filed praying for

stay of the execution proceeding. By order dated 11/03/2015, the learned trial Judge rejected the applications. The petitioner also filed application Exhibit 171 for impleading him as legal representative of the Judgment Debtor No.1, since deceased, and till such time, possession should not be handed over to the Decree Holder. Application at Exhibit 174 was filed by the Decree Holder for re-issuance of possession warrant as per Exhibit 79. By order dated 16/12/2015, the learned trial Judge rejected the application Exhibit 171 filed by the petitioner – Vasant and allowed the application Exhibit 174 filed by the Decree Holder.

3. Mr. Rajeshirke submitted that Suit instituted by the respondent – Decree Holder for redemption of mortgage was decreed. The said decree is confirmed upto the Apex Court. The defendants in that Suit denied that the transaction between the parties was that of mortgage and contended that it was sale with condition to re-purchase. He submitted that the Judgment Debtor No.1- Ramaji Dnyanu Patil died in the year 1999. Vasant, therefore, filed application Exhibits No. 152 & 171 for bringing him on record as legal representative of Judgment Debtor No.1, since deceased. By application Exhibit 156, he applied for stay of the execution proceedings. He submitted that as petitioner – Vasant is legal representative of Judgment Debtor No.1, he ought to be brought on record after the death of Judgment Debtor No.1. However, by the

impugned orders, the Courts below rejected the applications at Exhibits 152, 156 and 171 and allowed application at Exhibit 174.

4. Perusal of the impugned orders shows that Judgment Debtor No.1 had sold the property to Judgment Debtor No.2 – Subhadra Maruti Nalwade some time in the year 1989 i.e. to say even prior to institution of the Suit. The Suit instituted by the Judgment Debtor No.1 for redemption of mortgage was confirmed right upto the Apex Court. Judgment Debtor No.1, even before institution of the Suit, had conveyed the property in favour of Judgment Debtor No. 2. He had no subsisting interest in the suit property. That apart, in view of Section 2(11) of the Code of Civil Procedure, 1908 (for short 'CPC.'), petitioner – Vasant cannot claim to represent the estate of the deceased namely suit premises as Judgment Debtor No.1 had sold the property to the Judgment Debtor No.2. It has also come on record that on 03/03/2012, deed of re-conveyance is executed in favour of the Decree Holder.

5. The learned trial Judge while rejecting the application observed that the execution proceedings are pending for more than 4 years. In paragraph 4 of order dated 19/12/2015, the learned trial Judge recorded that various applications as also Regular Civil Suit No. 34 of 2015 was filed for resisting the execution of decree. The Suit was rejected. Judgment Debtor No.2 also resisted the execution of decree by filing Regular Civil Suit No.6 of 2008 which also came

to be dismissed. Third person – Sandeep and others also resisted the execution of decree by filing various applications as also Regular Civil Suit No. 104 of 2014. All these facts show that various persons have resisted the execution of the decree and the challenge was turned down. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)