

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 8375 OF 2016
ALONG WITH
WRIT PETITION NO. 8678 OF 2016***

Smt.Poornima Sanjay Gajare,
R/at 531, Sadashiv Peth,
Kumthekar Road, Pune – 411 030.

... Petitioner in
both petitions.

v/s

Sadashiv Laxmanrao Kokate by LRs.
1a) Shri Arun Sadashiv Kokate & ors.

... Respondents in
both petitions.

Mr.B.S.Nayak for the petitioner in both petitions.

Mr.Jaydeep Deo for Resp. No.2 in both petitions.

Mr.Tejas Dande along with Bharat Gadhavi i/by Tejas Dande & Asso.
For Resp. Nos.49, 4B (I to IV) and 5 in both petitions.

Mr.Vivek Salunke for Resp. Nos.6 in both petitions.

Coram: N.M. Jamdar, J.

Dated: 29 August 2016

ORAL ORDER:

By Writ Petition No.8375 of 2016, the Petitioner challenges the order below Exh.732 in Darkhast Proceedings No.173 of 1991, and by Writ Petition No.8678 of 2016, the Petitioner challenges the

order passed below Exhs.586, 608 and 614, arising out of the Darkhast proceedings.

2 The sum and substance of the Petitioner's challenge is, refusal by the Court executing the decree to protect the possession of the Petitioner in respect of the property in question.

3 Heard learned counsel for the parties.

4 Father of the Petitioner was appointed as a Receiver to collect rent in the suit property. He has proceeded to create a tenancy in favour of his daughter i.e. the Petitioner illegally, without seeking any leave. The Court, by an order dated 22 November 2002, terminated the receivership of the father of the Petitioner. Nothing is shown as to whether the Receiver had any right to create tenancy in respect of the Petitioner - his daughter. This is a clear abuse by the Receiver of the trust entrusted in him by the Court. The father of the Petitioner was appointed as the officer of the Court to guard the property, instead he has gone ahead and created obstacles by creating tenancy in favour of his daughter. In these circumstances, no indulgence can be shown to the Petitioner, who is a clear beneficiary of the abuse. This is not a case for invoking the equity jurisdiction of this Court under Article 227 of the Constitution of India. This is a fit case to proceed against the Receiver, but it is informed that he has now expired.

5 Both the writ petitions are accordingly rejected.

6 The decree is of the year 1975 and execution proceedings are pending since the year 1981 in view of various obstructions. Such position cannot be countenanced. The learned executing Court will give an utmost priority to the disposal of the Darkhast proceedings and make an endeavour to dispose of the same as early as possible.

(N. M. Jamdar, J.)