

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10533 OF 2014

ASHOKA EDUCATION FOUNDATION

...Petitioner

Versus

MR. PUNDALIK CHIMAJI VIDHATE

(SINCE DECD) THROUGH LRS. AND ORS.

...Respondents

....

Mr. R.S. Apte, Senior Counsel i/b. Jitendra H. Oak, Advocate for the Petitioner.

Mr. R.D. Soni a/w. Mr. V.R. Kasle, Advocate for Respondent Nos.1A to 1G.

Mr. Girish R. Agrawal, for Respondent Nos.2A, 2D and 2F.

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CORAM : R. G. KETKAR, J.

DATE : 28th JANUARY, 2016

P.C.

1. Heard Mr. R.S. Apte, learned Senior Counsel for the petitioner, Mr. R.D. Soni, learned Counsel for respondent Nos.1A to 1G, Mr. Girish Agrawal, learned Counsel for respondent Nos.2A, 2D and 2F, at length.

2. On the oral application made by Mr. R.S. Apte, on instructions from Ms. M.S. Tayde, Law Officer of the petitioner, leave to delete the names of respondent Nos.2B, 2C and 2E is granted. Amendment shall be carried out forthwith.

3. Rule. Learned Counsel for the respective respondents waive service. At the request and by consent of the parties, the rule is made returnable forthwith and the petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'judgment debtor No.2', has challenged the judgment and order dated 28.8.2014 passed by the learned Civil Judge, Junior Division at Nashik below Exhibit-37 in Regular Darkhast No.68 of 2006. By that order, learned trial Judge rejected the application made by judgment debtor No.2 for amending its say at Exh.27 which is filed on 19.3.2010.

5. Mr. Soni submitted that during pendency of this Petition, the judgment debtor No.2 has filed application dated 23.4.2015 *inter alia* praying for rejecting the prayer made in the Darkhast for possession of 24 Ares out of survey No.46/1 and for recording satisfaction of the decree. He submitted that without recording any reasons, the impugned order may be set aside and the application at Exh.37 may be ordered to be heard along with application dated 23.4.2015 filed by judgment debtor

No.2.

6. In view thereof, the impugned order dated 28.8.2014 is set aside and the application Exh.37 made by the judgment debtor No.2 is restored to the file of the trial Court. The trial Court shall decide the application Exh.37 afresh along with application dated 23.4.2015 filed by judgment debtor No.2. All contentions of the parties on merits are expressly kept open. Learned trial Judge will ensure that the order dated 26.10.2015 passed by Apex Court in SLP (C) No.28548/2015 is complied with. Rule is made absolute in above terms. Petition is disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)