

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5423/2014

Subhash Puri Parvat Puri and others

..VS..

Bramhanand Puri Mohan Puri Gosavi and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : 23.6.2016.

Heard Shri A.B. Moon, Advocate for the petitioners and
Shri A.B. Mirza, Advocate for the respondent No.1.

The respondent No.1 filed Regular Civil Suit No.37/2002 against Parvat Puri Mohan Puri Gosavi which came to be decreed by the judgment dated 28th November, 2006. The trial Court granted decree restraining the defendant or anybody else on his behalf from disturbing the plaintiff's possession over the suit property. The trial Court directed the defendant to remove the cattle shed constructed over the suit property. The respondent No.1 has filed proceedings to execute the decree. In these proceedings, the petitioners filed objection under Section 47 of the Code of Civil Procedure contending that they are the lineal descendants of defendant - judgment debtor, that the suit property is ancestral property and they are having right, title and interest in the suit property. This objection is rejected by the impugned order.

Shri A.B. Moon, Advocate for the petitioners has submitted that the Executing Court has not dealt with the objections raised by the petitioners and without considering the contentions of the petitioners that the suit property is

ancestral property and the petitioners have right, title and interest in the suit property, the Executing Court has directed issuance of warrant for possession. It is submitted that the impugned order is unsustainable and the matter is required to be remitted to the Executing Court for considering the objections filed by the petitioners.

After going through the impugned order and considering the material on the record, I find that whatever material is placed on the record by the petitioners, it is considered by the Executing Court in paragraph No.4 of the impugned order. The learned Advocate for the petitioners has not been able to point out that the petitioners have placed any document on the record to substantiate their pleadings that the suit property is ancestral property and that the petitioners are having right, title and interest in it. Whatever submissions are made before the Executing Court, are properly dealt with by the Executing Court. I do not find any patent illegality, perversity or error of jurisdiction which necessitates the interference with the impugned order by this Court in exercise of extra-ordinary jurisdiction. The petition is **dismissed** with costs quantified at Rs.10,000/- to be paid by the petitioners to the respondent No.1 within two months.

The petitioners have supplied court fee stamps of amount of Rs.3,000/- on 9th June, 2016.

Office to verify as to how much court fee stamps are required and if the court fee stamps supplied by the petitioners are more than the required to be supplied, the surplus amount be refunded to the petitioner.

JUDGE