

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

WRIT PETITION NO.5015 OF 2014

(Smt. Kesarbai wd/o Dhanraj Jadhao and others vs. Digamber Supda Lavange)

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Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

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Court's or Judge's Orders

Shri S.O. Ahmed, Advocate for the Petitioners.
Shri S.D. Chande, Advocate for the Respondent sole.

CORAM : Z.A. HAQ, J.

DATE : 20th JUNE, 2016.

Heard Shri S.O. Ahmed, learned Advocate for the petitioners-judgment debtors and Shri S.D. Chande, learned Advocate for the respondent-decree holder.

The petitioners-judgment debtors have challenged the order passed by the executing Court rejecting their objection under Section 47 of the Code of Civil Procedure.

The respondent had filed Special Civil Suit No.104/1992 against Dhanraj Ramsingh Jadhao (predecessor of the petitioners), in which decree for specific performance of the contract and for possession in respect of land admeasuring 2 acres 20 gunthas of Survey No.19 situated at village Dattapur came to be passed on 27/01/1994. The judgment and decree was challenged in appeal which was dismissed. The respondent has filed Special Darkhast No.37/1994 for execution of decree. During the pendency of the execution proceedings, the original defendant-Dhanraj died and the petitioners are brought on record as his legal heirs.

The petitioners filed application (Exhibit-141) under Section 47 of the Code of Civil Procedure raising an

objection that the decree is not executable as the schedule of property was not attached to the plaint and that the copy of draft sale-deed produced by the decree holder on record is not supplied to the petitioners.

The executing Court has recorded that the schedule of property is tendered by the decree-holder at the time of filing of the executing proceedings. In my view, the objection raised by the judgment-debtors on this point is not sustainable, as the description of the suit property is clearly given in the plaint and the decree passed by the trial Court in respect of the suit property came to be affirmed by the District Court in the appeal. The original judgment debtor-Dhanraj opposed the execution proceedings till he died in 2008. The executing Court has recorded that a copy of draft sale-deed was produced by the decree holder on record as reflected in the order dated 23/07/1996 and notice under Order XXI Rule 34 of the Code of Civil Procedure was issued to the judgment debtor-Dhanraj. The learned Advocate for the petitioners has submitted that the Assistant Superintendent, who is examined, has stated that he is not aware, whether the copy of draft sale-deed is served on the petitioners as required by Order XXI Rule 34 of the Code of Civil Procedure. It is further submitted that non-compliance of mandatory provisions of Order XXI Rule 34 of the Code of Civil Procedure cannot be overlooked and the executing Court has committed an error in rejecting the objection of the petitioners.

The petitioners have come on record as legal heirs of original judgment debtor- Dhanraj. The petitioners do not have any independent right. The executing Court has recorded that the order passed on 23/07/1996 shows that the decree

holder has produced the draft of sale-deed and notice under Order XXI Rule 34 of the Code of Civil Procedure was issued to the judgment debtor-Dhanraj. The petitioners have not been able to show that these observations of the executing Court are incorrect. The petitioners have not been able to show that the original judgment debtor-Dhanraj had raised an objection that the copy of draft sale-deed was not sent to him along with notice as required by Order XXI Rule 34 of the Code of Civil Procedure.

I do not find any patent illegality or any error of jurisdiction which necessitates interference by this Court while exercising the extraordinary jurisdiction.

The petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

**sdw*