

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 2524 OF 2017

1 Kashinath Laxman Dhole
Deceased through LRs

2 Vila Ramnath Dhole
age 36 years, occ. Business

3 Pradip Ramnath Dhole
age 34 years, occ. Business

Both r/o Near Sahyadri College
Plot No. 371
Nagar-Manmad Highway
Sangamner, Tq. Sangamner
Dist. Ahmednagar

Petitioners

Versus

1 Sahyadri Bahujan Vidya Prasarak
Samaj Sangamner
For and on Behalf of Chairman
Sudhir Bhaskarrao Tambe
age 59 years, occ. Doctor, Tambe Hospital
r/o Sangamner, Tq. Sangamner
Dist. Ahmednagar.

2 Prataprao Jayavantrao More
age 74, occ. Agril
r/o Vadgaon Pan
Tq. Sangamner
Dist. Ahmednagar

3 Balaji Laxman Kute
age 62, occ. Agril
r/o Sukewadi,
Tq. Sangamner
Dist. Ahmednagar

Respondents

Ms. S.M. Zaware, advocate for the petitioners
Mr. V.R. Dhorde, advocate for respondent no. 1.

CORAM : S.B.SHUKRE, J.

DATE : 22nd February, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for petitioners and learned Senior Counsel appearing for contesting Respondent No.1.

2 This petition challenges the legality and correctness of the order dated 20.01.2017, by which, possession warrant in terms of the decree passed on 17.08.1991, in favour of Respondents in Regular Civil Suit No.747 of 1982, has been issued.

3 Learned Counsel for the petitioners has strenuously attempted to show as to how this order is perverse and illegal, contending all the while that the decree holders are seeking to enforce the decree not only against the properties included in the decree, but also some other properties, which are not part of the decretal properties and the petitioners have not made any additional construction by violating the order of injunction operating during pendency of execution.

4 However, on going through the documents filed on record of this petition, I find that the learned Senior Counsel, appearing for Respondent No.1, is right when he submits that this petition is nothing but another attempt to prolong execution of the decree. The decree passed on 17.08.1991 has been confirmed not only by the first appellate Court when Regular Civil Appeal No.148/2000 was dismissed on 02.04.2012, but also by this Court

when Second Appeal No.478 of 2013 was dismissed on 28.09.2015. As if this was not enough, even Review Petition filed by the petitioners-judgment debtors came to be dismissed by this Court on 16.03.2016. Now, the decree dated 17.08.1991 has attained finality, at least after the prolonged resistance offered by the petitioners, was finally rejected.

5 Now, the petitioners are trying to stall execution of the decree by filing some frivolous applications. The contention of the petitioners is that the additional properties, not forming part of the decretal properties, are also sought to be taken into possession. However, the original application filed for execution of the decree nowhere discloses this fact and, therefore, the contention, in this regard, has been rightly rejected by the executing Court. The other contention of the petitioners is that petitioners have not made any additional construction on the decretal property, in violation of operation of the injunction order. However, a bare perusal of the say to the application vide Exhibit-44, wherein a specific contention has been raised by Respondents, that such additional construction has been made in violation of injunction order, it exists now and is required to be removed, makes it clear that petitioners have not denied such specific contentions. It is only said that this application vide Exhibit-44 could not be allowed because some matter was pending in the High Court at that time. In fact, as pointed out by the learned Senior Counsel, appearing for Respondent No.1, no matter was pending in the High Court in respect of execution of the decree or issuance of possession warrant. Since this specific contention has not been denied by the petitioners, it would have to be taken that the petitioners admit the

fact that they have carried out such additional construction in illegal manner and, therefore, it will have to be coercively got removed by the respondents, as the decree dated 17.08.1991 prescribes that vacant possession of Municipal House No.371 be delivered to the respondents. If such construction is not removed by the petitioners voluntarily, it would have to be got removed by the Court by use of force or otherwise possession of the decretal house could not be delivered in vacant condition.

6 In these circumstances, I do not see that by granting possession warrant against petitioners on 20.01.2017, the executing court has exceeded its jurisdiction or has gone beyond or behind the decree or has caused any miscarriage of justice. There is no merit in this petition.

7 In the result, petition stands dismissed. Rule discharged. No costs.

S.B.SHUKRE
JUDGE

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