

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5930 OF 2016

RAMNATH NARAYAN DEVDHE AND OTHERS
VERSUS
GANPAT KONDIBA KHELKAR AND OTHERS

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Advocate for the Petitioners : Shri N.B.Khandare h/f Shri Bide
Dnyaneshwar A..

Advocate for Respondent 1 : Smt.C.S.Deshmukh.

Advocate for Respondent 3 : Shri P.P.Dawalkar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th December, 2017

Per Court:

1 This matter was heard for quite some time on 13.12.2017.

2 By this petition, the Petitioners have put forth their prayers at
clauses C and D, which read as under:-

"(C) The order below Exhibit 84 in RD No.1/2012 dated
05.05.2016 passed by learned Civil Judge, Junior
Division, Shevgaon, Taluka Shevgaon, District
Ahmednagar may kindly be quashed and set aside.

(D) The order below Exhibit 84 in RD No.1/2012 dated
05.05.2016 passed by learned Civil Judge, Junior
Division, Shevgaon, Taluka Shevgaon, District
Ahmednagar may kindly be stayed till the final
disposal of this writ petition."

3 Though the learned Advocates for Respondent Nos.1 and 3
have strenuously defended the impugned order, it cannot be ignored that

the impugned order dated 05.05.2016 below Exhibit-84 has been passed in Regular Darkhast No.1/2012 based on the decree dated 25.03.2008, which has been subsequently set aside by the judgment of this Court in Second Appeal No.120/2012 dated 08.08.2013.

4 Respondent Nos.2 and 4, though served, have not chosen to enter an appearance.

5 The subject matter of Regular Darkhast No.1/2012 was the decree, which was challenged in this Court in Second Appeal No.120/2012. The said decree dated 25.03.2008 was set aside by judgment dated 08.08.2013. After the matter was remanded back to the Trial Court, a fresh judgment and decree was delivered on 14.08.2014.

6 The learned Advocates for Respondent Nos.1 and 3 submit, on instructions, that since an application has been filed in Regular Darkhast No.1/2012 about two to three days ago praying for placing on record the fresh decree dated 14.08.2014, by which the Decree Holder desires to base the execution proceedings on the subsequent decree, liberty may be granted to take corrective measures in the pending execution proceedings.

7 The learned Advocate for the Petitioners submits that this petition will have to be allowed since the impugned order cannot be sustained in the execution proceedings, which were based on the earlier judgment and decree, which has been subsequently set aside by this

Court. He further submits that in the event the Decree Holder desires to take some steps in the pending Regular Darkhast No.1/2012, all contentions of the Petitioners need to be kept open since they desire to oppose the said steps.

8 Considering the above, this Writ Petition is partly allowed. The impugned order dated 05.05.2016 is quashed and set aside and Exhibit 84 stands rejected.

9 Since the Petitioners desire to take steps in the pending Regular Darkhast No.1/2012, it be noted that this Court has not given any liberty to the Decree Holder, in the sense that if any application is filed with regard to the subsequent decree being brought on record in the pending execution proceedings, the Executing Court may consider the same on it's own merits and strictly in accordance with the provisions of law.