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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7474 OF 2017

1. Jagnnath Kisan Sathe (Died) PETITIONERS
Through Legal Representatives

a. Vishrantabai Jagnnath Sathe,
Age - 81 years, Occ - Larbourer

b. Gulab Jagnnath Sathe,
Age - 57 years, Occ - Labourer

c. Raghunath Jagnnath Sathe,
Age - 57 years, Occ - Labour

d. Bhujang Jagnnath Sathe,
Age - 37 years, Occ - Labourer

All R/o Tanpurwadi, Taluka - Pathardi,
District - Ahmednagar

2. Shobha Anna Tijore,
Age - 41 years, Occ - Labourer
R/o Warur, Taluka - Shevgaon,
District - Ahmednagar

VERSUS

Laxman Ramnath More
Age - 58 years, Occ - Service
R/o Tanpurwadi, Taluka - Pathardi,
District - Ahmednagar

RESPONDENT

.....
Mr. Arvind G. Ambetkar, Advocate for the petitioners
Mr. Prashant R. Nangare, Advocate for the respondent
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 7th JUNE, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.

2. Respondent is plaintiff in Regular Civil Suit No.103 of 1989 instituted for redemption of mortgage of land specifically described in mortgage deed, from land survey No.254 (New Survey No.22/1), admeasuring about 24 *are* as described therein from 3 Hectare, 81 *are* land.

3. The suit has been decreed under judgment and decree of trial court dated 17th April, 1996. Even final decree had been passed under an order dated 22nd February, 2013, directing present petitioner to deliver all the documents in his possession or power relating to suit property to the plaintiff and execute registered sale deed in favour of plaintiff free from all encumbrances and to deliver vacant possession of the same.

4. Regular Darkhast came to be filed for execution of decree. In said proceedings sale deed came to be executed of about 24 *are* land as described in mortgage deed, by legal heirs of mortgagee on 4th February, 2016. However, it appears that possession had not been delivered. As such, execution

proceedings were preferred. In said proceedings, an application came to be moved by the decree holder for possession. The application of the decree holder was objected to by the judgment debtors contending that as to on which side / direction 24 *are* land lies has not been explained and the property cannot be said to be identifiable. Said application has been rejected by the executing court on 21st March, 2017 and as such, the petitioners are before this court.

5. Learned advocate for the petitioners - judgment debtors contends that property decreed under the orders of the court and the one of which possession is sought to be taken over are different properties and it cannot be said with certainty that sale deed is executed in respect of mortgaged property. Suit property has been differently described and the sale deed pertains to some other property. He submits that the court has not considered this aspect and has cursorily passed order.

6. Learned advocate Mr. Nangare appearing for the respondent - decree holder contends that suit has been decreed granting redemption of mortgaged property which has been properly described in the mortgage deed and the very same description has been carried to in the sale deed, which has been

executed by legal heirs of judgment debtors. He submits that decree holder is seeking possession of the very property which had been mortgaged and the judgment debtors are trying to dodge execution of decree on such pretexts which are untenable. He purports to submit that it would be a fallacious argument to contend that suit had been instituted for a different property than the mortgaged one. He submits, it is evident from the property described in the mortgage deed and the one described in the sale deed that the property is one and the same. He submits that the executing court has properly adjudged that the property for which execution is pending is the mortgaged property and has also referred to that sale deed has been executed after getting approval. Neither draft sale deed nor execution of sale deed has been subject matter of challenge. He points out that the court has specifically observed that question of identifiability of the property does not arise at all. It is not absolutely the case of the judgment debtors that the suit property described and the one in the mortgage deed were different at any point of time, the question which is tried to be raised during the execution.

7. Having heard learned advocates as aforesaid, the property as has been described during the suit for redemption has been

granted by the court. A decree accordingly has been passed which has been made final. Sale deed pursuant to the same has been executed. During all these proceedings not even by whisper there had ever been contention on behalf of the judgment debtors that the property in suit and the one involved in the execution has been different. It is not the case that the property as described in the mortgage deed and the one referred to in the sale deed has been different. A contention is sought to be raised about direction in which property is situated in the entire property during execution. Since execution is sought in respect of property as described in mortgage deed which exactly corresponds to the property described in the sale deed, it does not appear to be a case that objection being taken for execution of decree on that count carries any substance. The impugned order further depicts that it has taken into account relevant aspects involved and order dated 21st March, 2017 has been passed issuing possession warrant. Same does not call for any interference.

8. Writ petition, as such, stands dismissed. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]