

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

WRIT PETITION NO. 9354 OF 2016

BABU FAKIRA GUNJAL AND OTHERS
VERSUS
RAM SHANKAR MENDKE @ JADHAV

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Advocate for the Petitioners : Shri Maniyar Irfan D.
Advocate for the Respondent : Shri Bhavthankar Vivek Vasantrao.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th December, 2017

Per Court:

1 The Petitioners are aggrieved by the order dated 30.04.2016 by which, the application Exhibit-199 filed by them on 18.03.2013 seeking recalling of the possession warrant, has been rejected in Regular Darkhast No.20/2000.

2 The Petitioners herein, after filing Exhibit-199, have remained absent and have not conducted the application before the Executing Court. After pendency of the application for three years, the Executing Court has finally rejected the said application by order dated 30.04.2016.

3 The learned Advocate for the Respondent/ Decree Holder has strenuously opposed this petition. He submits that he has been illegally dispossessed in 1983 and since then, the Petitioners/original Defendants

have been delaying the matter on some or the other pretext.

4 I have considered the submissions of the learned Advocates and I find that Regular Darkhast No.20/2000 with regard to the judgment and decree dated 18.04.1990 is still pending. The only grievance raised by these Petitioners is that the Decree Holder has not properly described the details of the property at issue and hence, until the said aspect is decided, the execution proceedings cannot be concluded.

5 I find that practically three and half decades have been lost in the present litigation. The suit being RCS No.48/1983 filed in 1983 was decreed on 18.04.1990. Thereafter, the RCA No.31/1990 challenging the judgment and decree dated 18.04.1990 came to be dismissed on 17.08.1999 and thereafter, Second Appeal No.319/2000 filed before this Court came to be dismissed on 03.10.2002. The Decree Holder/ Plaintiff, though had succeeded in the suit within seven years from the filing of the suit, is yet to reap the fruits of the decree for the last 28 years.

6 Considering the above and the conduct of the Petitioners as is evident from the impugned order, this Writ Petition does not deserve to be entertained. The same is, therefore, disposed of.

7 However, in the interest of justice, the Executing Court is directed to decide Regular Darkhast No.20/2000 on or before 30.04.2018. All contentions of the Judgment Debtors are kept open for the Executing Court to consider within its jurisdiction as is permissible while deciding

the execution proceedings.

8 Needless to state, the litigating sides shall cooperate with the learned Executing Court and the learned Executing Court would be at liberty to reject the applications for adjournments, if they are based on unreasonable grounds.

kps

(RAVINDRA V. GHUGE, J.)