

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

WRIT PETITION NO.11789 OF 2014

1. Padminibai d/o Ambadas Kadam,
Sow. Padminibai w/o Hanmant Chothawe
(after marriage)
Age 26 years, Occu. Household,
R/o Chothawe Galli,
Taluka and District Latur.
 2. Mangal d/o Ambadas Kadam,
Age 22 years, Occu. Household,
R/o Nandgaon, Taluka and
District Latur.
- ... PETITIONERS

VERSUS

1. Shriksirhna Gopinath Parsewar,
Age 76 years, Occu. Business,
R/o Opp. Shivneri Gate, Market Yard,
Kava Road, Latur.
 2. Pandurang Ambadas Kadam,
Age 30 years, Occu. Business,
 3. Kalawati w/o Ambadas Kadam,
Age 68 years, Occu. Household
 4. Nanda w/o Bibhishan Jadhav,
Age 48 years, Occu. Household,
- Nos.2 to 4 R/o Patel Chowk,
Taluka and District Latur. ... RESPONDENTS

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Shri Amit S. Deshpande, Advocate for petitioners
Shri A.M. Gaikwad, Advocate for respondent No.1

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CORAM: S. B. SHUKRE, J.

DATED: 22nd March, 2017.

ORAL JUDGMENT :

1. Heard learned counsel for the petitioners and learned counsel for respondent No.1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. The impugned order has been passed on an application filed under Order 21 Rule 89 of the Code of Civil Procedure. This application admittedly has been filed after expiry of 50 days from the date of sale and thus, it was beyond limitation. That apart, the thrust of the objections taken in the application is non-following of the procedural requirements of Order 21 Rule 66, in particular sub-rule (2) of the Code of Civil Procedure. Non-following of these procedural requirements falls into the category of material irregularity as contemplated under Order 21 Rule 90 of the Code of Civil Procedure and it does not fall within the scope of enquiry under Order 21 Rule 89 of the Code of Civil Procedure. Therefore, I do not see any patent illegality or perversity in the impugned order. There is no merit in this petition. The petition deserves to be dismissed and stands

dismissed with costs. Rule is discharged.

3. At this stage, learned counsel for the petitioners has submitted that, stay to the execution of the decree be continued for a period of six weeks to enable him to approach before the Apex Court. The request is opposed by learned counsel for respondent No.1. Considering the fact that another application filed under Order 21 Rule 90 of the Civil Procedure Code is already pending before the Executing Court, no prejudice is going to be caused to the petitioners by refusing the stay. Accordingly the request is rejected.

(S. B. SHUKRE)
JUDGE

fmp/