

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

WRIT PETITION No. 12554 of 2016

Sayyed Mushtaq S/o Sayyed Abbas (DIED)
through his legal heir Jaibunnis Mushtaq Sayyed,
age 56 years occupation service
R/o in front of Kotwali Police Station,
near Sardarjee Machinewale, Ahmednagar **...PETITIONER.**

VERSUS

Shaikh Nasir Chhannubhai Shaikh
age 54 years occupation contractor
R/o Burudgaon road, Ahmednagar. **...RESPONDENT**

Mr V.P. Latange, Advocate for petitioner
Mr R.L. Kute, Advocate for respondent sole

CORAM : NITIN W. SAMBRE, J.

DATE : 20th November, 2017

ORAL ORDER :

Pursuant to decree for specific performance passed in Special Civil Suit No. 406 of 1995, the respondent initiated Darkhast for execution being Special Darkhast No. 113 of 2004 which is re-numbered as Regular Darkhast No. 115 of 2012. The present petitioner, wife of original judgment debtor who died in 2006 i.e. after decree was passed, already executed sale deed in favour of present respondent. However, the execution is restricted only to the extent of possession of suit property.

2. The executing Court issued warrant of possession before which objection was raised by the present petitioner claiming to be legal heir of judgment debtor. In view of pendency of various litigations, such as, Regular Civil Suit No. 379 of 1995, First Appeal No. 823 of 2006, Special Civil Suit No. 406 of 1995, Regular Civil Suit No. 74 of 2012, the decree is not executable for the reason that if permitted to be executed there will be complications.

3. Shri Latange, learned Counsel for the petitioner, would try to impress upon the Court for grant of relief that till above referred proceedings are finally decided, the decree may not be executed and execution, as such, be kept in abeyance. By inviting the details of the property of which the possession is sought from the copy of sale deed executed by husband of petitioner with that of the property claimed in the execution proceedings. He would also try to submit that possession of different property is sought to be taken by virtue of execution, which is not permissible. In view of above, he sought that the petition be allowed.

4. Learned Counsel for the respondent/decreed holder would urge that there is certain suppression on the part of the petitioner as similar prayer moved vide Exh. 13 is suppressed before the Trial

Court and so also this Court, which was rejected by the executing Court at the relevant time. He would then urge that the respondent is yet to get fruits of the decree that was passed in his favour in 1995. He would try to bring to the notice of this Court the conduct of the petitioner, particularly, when her husband who remained alive, till 2006 never objected, rather, executed sale deed in favour of the respondent. He sought dismissal of the petition by submitting that the warrant of possession be directed to be executed.

5. Considered submissions. Though it is claimed that there are various proceedings pending in relation to the suit property between the parties, however, this Court must take judicial note of the fact that petitioner/ judgment debtor has not initiated any of the proceedings, whereas the petitioner is rather defending some proceedings out of the same. In none of the other proceedings, which are pending, an injunction is ordered at the behest of respondent or any of the party restraining execution of the decree in favour of the respondent.

6. So far as claim of the petitioner that there is variance in the details of the property mentioned in the sale deed and one of against which execution is sought. Upon comparison it could be

noticed that the sale deed is already executed by husband of the petitioner, way back in 1995. However, the possession of the same property is sought in the execution proceedings.

7. If the execution is carried out against some different property, such property holder or the Trial Court will look into the same.

8. In the aforesaid backdrop, I hardly notice any substance in the submissions made by the learned Counsel for the petitioner warranting interference in the order impugned.

9. The petition, as such, fails and stands dismissed.

(NITIN W. SAMBRE, J.)

pjm