

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3151 OF 2017

Vimal Ramchandra Patil

...Petitioner

Versus

Shri.Vyankatrao Dnyanu Kokate
(since deceased through representative)
Sunanda Sanjay Daund & Anr.

...Respondents

...
Mr.Kuldeep U.Nikam for the Petitioner.

...

CORAM : R.G.KETKAR, J.
DATE : 15th March 2017

P.C.

. Not on board. At the request of Mr.Nikam, learned counsel for the petitioner, taken up for admission. Heard Mr.Nikam, learned counsel for the petitioner, at length.

2. By this Petition, under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as “the judgment debtor”, has challenged the Judgment and Order dated 1st February 2017, below Exhibit-14, as also the Judgment and Order dated 1st February 2017, below Exhibit-16, passed by the learned 4th Joint Civil Judge, Junior Division, Sangli in Regular Darkhast No. 256 of 1999.

3. By order dated 1st February 2017, learned trial Judge has allowed the application below Exhibit-14 made by respondent no.1-

Vyankatrao D. Kokate (*since deceased*) for impleading Sunanda Shantaram Daund as 'decree holder no. 2'. By order dated 1st February 2017 below Exhibit 16, the learned trial Judge has issued possession warrant.

4. In support of the petition, Mr. Nikam submitted that, on 17th June 2004, decree holder Vyankatrao Dnyanu Kokate has filed application Exhibit 14 contending that, during the pendency of the appeal, decree holder had executed a gift-deed in favour of his daughter Sunanda Shantaram Daund. An application was, therefore, made pending the appeal to implead Sunanda Sanjay Daund and, accordingly, she was also impleaded in the appeal. Prayer was therefore, made to implead her as 'decree holder no.2'. Mr. Nikam further submitted that during the pendency of Regular Darkhast No. 256 of 1999, decree holder - Vyankatrao Dnyanu Kokate died on 4th June 2006 and till that time application Exhibit-14 was not decided. As the application was not decided during the life-time of the decree holder - Vyankatrao Dnyanu Kokate, it cannot be said that application Exhibit-14 was alive. After the death of decree holder - Vyankatrao Dnyanu Kokate, his legal heirs were not brought on record. The learned trial Judge has allowed the application below Exhibit-14 by treating Sunanda Shantaram Daund as a legal representative of decree holder - Vyankatrao Dnyanu Kokate. He

submitted that the learned trial Judge was not justified in bringing Sunanda Shantaram Daund on record as legal representative of the original decree holder, when there was no such application. By clause (2) of the operative order dated 1st February 2017, **Sunanda Shantaram Daund** was impleaded as decree holder as against Sunanda Sanjay Daund. He submitted that order below Exhibit-14 is required to be quashed and set aside.

5. As far as Exhibit-16 is concerned, the learned trial Judge has allowed the prayer made by the decree holder - Vyankatrao Dnyanu Kokate to hand over actual physical possession either to him or on his behalf to Sanjay Ravso Daund. He submitted that this is not permissible after the death of the decree holder - Vyankatrao Dnyanu Kokate. He further submitted that decree holder - Vyankatrao D.Kokate died on 4th June 2006 and there was no application to bring his legal heirs on record.

6. I have considered the submission advanced by Mr. Nikam. Perusal of the Exhibit-14 shows that Regular Civil Appeal No. 22 of 1999 was preferred against the trial Courts decree before the learned District Judge, Sangli. During the pendency of the appeal, decree holder - Vyankatrao Dnyanu Kokate had executed gift-deed in favour of his

daughter Sunanda Shantaram Daund. It appears that the application made in the appeal for impleading her in the matter was allowed and she was impleaded in the appeal. On 17th June 2004, decree holder - Vyankatrao Dnyanu Kokate filed an application for impleading Sunanda Shantaram Daund as 'decree holder no.2' on the ground that he had executed gift-deed in her favour. It is not in dispute that decree holder - Vyankatrao Dnyanu Kokate had executed gift-deed in respect of the suit property in favour of his daughter Sunanda Shantaram Daund. It is also noted that no proceedings have been initiated challenging the said gift-deed, which was executed by the decree holder - Vyankatrao Dnyanu Kokate in favour of his daughter.

7. In my opinion, after execution of the gift-deed by decree holder - Vyankatrao Dnyanu Kokate, he was divested of his interest in the suit property and corresponding interest was created in favour of his daughter. As noted earlier, application Exhibit-14 was made on 17th June 2004. As no proceedings were initiated challenging the said gift-deed, the trial Judge ought to have disposed of the application with promptitude. It is really unfortunate that the said application came to be decided only in the year 2017.

8. In my opinion, the death of the original decree holder - Vyankatrao Dnyanu Kokate, on 4th June 2006, does not change the fate of the matter. It is not in dispute that the original decree holder - Vyankatrao Dnyanu Kokate had executed gift-deed in favour of his daughter and she was impleaded in the appeal. As she was impleaded in the appeal, there was really no necessity for Vyankatrao Kokate to file application Exhibit-14.

9. Be that as it may. Having filed that application, the learned trial Judge should have disposed of that application and brought her on record as 'decree holder' by deleting the name of the original decree holder - Vyankatrao Dnyanu Kokate. In view thereof, I do not find that the learned trial Judge has committed any error in allowing the application Exhibit-14 vide his order passed on 1st February 2017.

10. As far as the application Exhibit-16 is concerned, the original decree holder - Vyankatrao Dnyanu Kokate prayed for handing over possession of the suit property either to him or on his behalf to Sanjay Ravso Daund. By the impugned order dated 1st February 2017, the learned trial Judge has issued warrant of possession on the ground that Regular Civil Appeal preferred against the judgment and decree passed in Regular Civil Suit No.31 of 1998 was dismissed in the year 2004 and

there was no documentary or other evidence brought on record, which would show that the Judgment Debtor has preferred Second Appeal thereafter.

11. The learned trial Judge has also noted that the daughter of the original decree holder, namely, Sunanda Shantaram Daund is impleaded as 'decree holder no. 2'. Accordingly, the learned trial Judge issued warrant of possession. Mr. Nikam submitted that no application was made for bringing his legal heirs on record. In my opinion, the judgment debtor is nowhere concerned whether the original decree holder left behind his legal heir once he had executed a gift-deed in favour of his daughter Sunanda Shantaram Daund. In view thereof, no case is made out for invocation of power under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R.G.KETKAR,J.)