

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4633 OF 2016**

Mr.Ashok Hari Chavarkar

...Petitioner

Versus

Mr.Harshraj Vijay Deolkar & Ors.

...Respondents

.....

Mr.Uday P. Warunjikar for the Petitioner.

Mr.Roshan S.Tanna for Respondent Nos. 1 and 2.

.....

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JULY 03, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 11.03.2015 passed by the learned Jt. Civil Judge, Junior Division, Raigad, Alibag below Exhibit 25 in Civil Misc. Application No. 94 of 2015.

3. It is submitted that Misc. Civil Application No. 94 of 2015 had taken out by the third party in Regular Civil Suit No. 43 of 1978. The Suit was filed for partition and possession. The said Regular Civil Suit was decreed on 21.03.1980 and thereafter, respondent nos. 1 and 2/original plaintiffs had filed execution in Regular Darkhast No. 52 of 1980. In that Suit, the present petitioner/third party had moved an application.

4. The learned counsel for the petitioner submits that one of the reasons for rejecting the said application was that non applicants were not served. The main application can be heard after serving the non applicants.

5. The learned counsel for the respondents submits that execution and percept were sent before the District Collector and therefore, he prays that the District Collector may proceed with the mater.

6. Considering the submissions made by the learned counsel for both the parties, I set aside the order dated 11.03.2015 passed by the learned Jt. Civil Judge, Junior Division, Raigad, Alibag. Hence, Civil Misc. Application No. 94 of 2015 is to be tried by the Executing Court. In the meantime, the parties are directed not to change the original revenue record and the District Collector may proceed with the measurement and the possession is not to be handed over. The trial Court is directed to hear the main application on or before 31.03.2018. Hence, Writ Petition is disposed of.

7. In view of the above, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)