

Mr. P. S. Dani, Senior Advocate a/w. Ms Jui A. Nerurkar for Petitioner.
Mr. Vilas S. Shelar for Respondents No.1 to 5.
Mr. Lendl Coutinho i/b. Mr. Swapnil S. Mohite for Respondent No.7.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'third party', has challenged the judgment and order dated 12.02.2014 passed by the learned 2nd Joint Civil Judge, Senior Division, Pune below exhibit-24 in Special Darkhast No.59 of 2013. By that order, the learned trial Judge has rejected the application filed by the third party raising objections as also praying for impleadment as third party in the Darkhast instituted by the respondents.

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sq.ft. and shop admeasuring 750 sq.ft. which is reserved in 'J' Wing of the building situate over Survey No.21/4, more particularly described in paragraph 1 of the plaint. He submitted that third party is the co-owner and she has half share in the suit property. The decree must enure to the benefit of the third party as well. The Suit was instituted without impleading third party to the Suit and the decree was also obtained. Third party is, therefore, entitled to half share in the suit property and therefore, she should be impleaded in the Darkhast proceedings. By the impugned order, the learned trial Judge has held that application is not tenable and the third party has remedy.

4. I do not find that the learned trial Judge has committed any error in rejecting the application. It is settled position of law that executing Court cannot go behind the decree. If at all third party has grievance, she has remedy to proceed against the decree-holders as the third party claims that she has half share in the suit property. Reserving that liberty, to the petitioner, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab