

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 482 OF 2018

KAUSHALYABAI KONDABAI HIRALAL PAHADE
VERSUS
UTTAMCHAND KISHANCHAND PAHADE AND OTHERS

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Advocate for Petitioner : Shri Godhamgaonkar P.G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 22, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 13.11.2017, passed by the Executing Court, thereby rejecting application Exhibit 52, filed by the petitioner in F.D. No.3 of 2011.

2. The petitioner has strenuously canvassed a host of factors including that the petitioner was forced into filing Special Civil Suit No.71 of 1991 by defendant No.1 / Uttam. Since the petitioner approached the Civil Court, the issue as to whether the property is ancestral property or not was framed. By concluding that the suit property is ancestral property, the trial Court delivered its judgment and decree dated 21.8.2002, crystallizing the shares of the litigating sides. All this has been done because

of the evil design of Uttam. A fraud was played on the plaintiff. She has been deprived of her property by a fraud.

3. I find that it is undisputed that the judgment of the trial Court dated 21.8.2002 was subject matter of a first appeal and a second appeal. Both the appeals preferred by the petitioner have been dismissed. The executing Court has ordered the appointment of a Court Commissioner so as to suitably demarcate the shares of those litigating sides, who have been held to be entitled to the particular shares by the decree of the trial Court. The applicant desires that the appointment of the Court Commissioner should be recalled and hence application Exhibit 62 was filed under Section 47 of the CPC.

4. By now, it has been settled through catena of judgments that the ambit of the enquiry under Section 47 is extremely limited and even lesser than the enquiry contemplated under Order XXI Rule 97 of the CPC. When the judgment and decree of the trial Court has been sustained upto the level of the Second Appeal, then the executing Court has rightly concluded while rejecting Exhibit 62 that it cannot travel beyond the decree.

5. I do not find that the view taken by the trial Court could

be termed as being perverse or erroneous or likely to cause gross injustice to the petitioner, keeping in view, that the judgment and decree of the trial Court has been sustained upto this Court. The petition, being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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