

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO. 4178 OF 2015

NAGRAJ BHIMRAO MALI AND OTHERS
VERSUS
MADHUKAR AMRUT MALI

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Advocate for Petitioners : Mr. U. S. Patil
Advocate for Respondent : Mr. M. S. Shah h/f
Mr. S. P. Brahme

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CORAM : V. K. JADHAV, J.
DATED : 4th APRIL, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioners are the original judgment debtors. In the pending Regular Darkhast no.9 of 2002, the petitioners have filed application Exh.61 for appointment of Court Commissioner. The respondent/decreed holder has strongly resisted the said application and the executing court by impugned order dated 03.12.2014 has rejected said application Exh.61. Hence, this writ petition.
3. Learned counsel for the petitioners/judgment debtors

submits that though the executing court on earlier occasion in the pending Regular Darkhast by order dated 18.06.2004 below Exh.22 appointed the Court Commissioner to inspect the spot, the advocate, who was appointed as a Court Commissioner to inspect the suit land, has not submitted complete report. The petitioners/judgment debtors have, therefore, filed application Exh.61 for appointment of DILR as a Court Commissioner to inspect the suit land and submit report before the executing court. Learned counsel submits that the dispute pertains to the land admeasuring 2R and the said portion of the land is specifically preserved for the purpose of well. However, the advocate who came to be appointed as a Court Commissioner has submitted incomplete report and in view of the same, it is not possible for the executing court to dispose of the pending Regular Darkhast by passing an appropriate order. However, the executing court has rejected said application Exh.61 erroneously.

4. Learned counsel for the respondent/decreed holder submits that the respondent has filed the said Regular Darkhast way back in the year, 2002 in respect of the judgment and decree passed

in Regular Civil Suit no. 94 of 1992. Learned counsel submits that so far as the land admeasuring 2 R is concerned, out of suit land gat no.255, the same is a barren land kept for the purpose of well. However, even though the decree is passed in favour of the respondent which has attained the finality, the petitioners have started cultivating the said portion of the land forcibly. Consequently, respondent/decreed holder was constrained to file the Regular Darkhast. Even the petitioners have instituted Regular Civil Suit no.20 of 2004 in respect of the same property. However, said suit came to be dismissed, against which no appeal has been preferred. Learned counsel submits that the respondent/decreed holder has filed application Exh.22 in the pending Regular Darkhast for appointment of Court Commissioner to inspect the said portion of the suit land and accordingly one advocate came to be appointed to inspect the land and he has also submitted report. The said Court Commissioner was subjected to cross examination by the respondent/decreed holder and he has given certain admissions in favour of the respondent/decreed holder. Consequently, the petitioners have filed another application with some ulterior motive for appointment of another Court Commissioner. The

executing court, after considering the same, has rightly rejected the application. No interference is required.

5. On careful perusal of the contents of the pending Regular Darkhast and the applications Exh.22 & 61, it appears that respondent/decreed holder is seeking the execution of decree passed way back in the year, 1992 and the said Regular Darkhast is pending since, 2002. The decree passed in Regular Civil Suit no.94 of 1992 has attained the finality and the said decree is only for perpetual injunction in respect of land block no.255, admeasuring 2 Gunthas. I do not understand that for the execution of decree for perpetual injunction why executing court is taking recourse to the appointment of Court Commissioner. It is also an admitted fact that after decree passed in RCS no.94 of 1992, the petitioners have instituted RCS no.20 of 2004 in respect of the property which is the subject matter of the Darkhast and along with some other properties for decree of perpetual injunction. However, the trial court by judgment and decree dated 13.01.2014, dismissed the said suit. The trial court, while disposing the said suit, has also referred the judgment and decree passed in RCS no.94 of 1992. It is the

contention of the respondent/decreed holder that during the course of cross-examination of the said Court Commissioner, the respondent/decreed holder has sufficiently exposed the petitioners' dishonest conduct and that led the petitioners to file application Exh.61 with an ulterior motive for appointment of another Court Commissioner.

6. In view of same, I do not find any substance in this writ petition. The trial court has rightly rejected application Exh.61. Hence, I proceed to pass the following order.

ORDER

I) Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

vsm/