

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 SECOND APPEAL NO. 176 OF 2018
WITH CA/3086/2018 IN SA/176/2018

POSHETTI GIRMAJI MUTTEPOD
VERSUS
GRIMAJI NARSAPPA MUTTEPOD (DIED) LRS SAILU AND
OTHERS

.....
Advocate for Appellant : Mr. Kedar Balbhim R.

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CORAM : V. K. JADHAV, J.
DATED : 16th APRIL, 2018

PER COURT:-

1. The learned counsel for the appellant submits that the appellant/JD filed an application under Section 47 of the Code of Civil Procedure, 1908 in the pending execution on various grounds. The learned counsel submits that both the courts below have turned down the objections raised by the appellant/JD. Hence this second appeal.

2. The learned counsel for the appellant submits that the appellant/JD is the owner in possession of the land admeasuring 2H 2R and the decree is in respect of the recovery of the portion

of land allegedly encroached by the appellant/JD. The learned counsel submits that the decree cannot be executed at the cost of reducing the area owned and possessed by the appellant/JD. The learned counsel submits that in terms of provisions of Section 48 of the Transfer of Property Act, 1882, the priority of the rights created by transfer are defined and rights previously created by transfer are protected. The learned counsel submits that admittedly, the appellant/JD is the previous transferee from the same vendor and the respondent/DH is the subsequent transferee.

3. I have carefully gone through the impugned judgment and order passed by the Courts below. Admittedly, the decree passed in R.C.S. No. 22/2002 has attained the finality and the executing Court cannot go behind decree. There is no jurisdictional error and the objection is not raised as to the nullity of the decree passed in the aforesaid suit. It appears that the objection has raised as to the executability of the decree and the same is not maintainable. Such objection cannot be entertained under Section 47 of the Code of Civil Procedure, 1908.

4. In the case of *M/s. Breakwel Automotive Components (India) Pvt. Ltd. Vs. P.R.Selvam Alagappan* reported in *AIR 2017 SC 1577*, the supreme Court has observed that the executing Court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties thereunder. It is only in limited cases, where the decree is by a Court lacking inherent jurisdiction or is a nullity that the same is rendered non-est and is thus in-executable. Even a erroneous decree cannot be equaled with one which is a nullity. There are no intervening developments as well as to render the decree in-executable. Section 47 of the Code mandates determination by an executing Court, questions arising between parties or their representatives relating to execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same.

5. In the instant case, none of the above eventualities as recognized in law for rendering a decree in-executable exists. The decree does not suffer either from any jurisdictional error or is otherwise invalid in law. The Court below dealt with the question arises in the matter correctly.

6. I do not find any substantial question of law involved in this second appeal. Second appeal is hereby dismissed. No costs.

7. In view of dismissal of second appeal, civil application does not survive and the same is accordingly disposed of.

(V. K. JADHAV, J.)

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