

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 84 OF 2011

AMITKUMAR DINESH BEDMUTHA
VERSUS
MANDAKINI RAJENDRA CHHAJED AND ANOTHER

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Advocate for the Applicant : Shri M.M.Bhokarika
Advocate for Respondent Nos. 1 and 2 : Shri S. S. Bora.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 12th JULY, 2018.**

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PER COURT :

1. The applicant in this petition was the original plaintiff in Regular Civil Suit No. 32/2006. The original defendant has passed away during the pendency of the suit. The suit was decreed by judgment dated 26/10/2007 after respondent No.1, wife of the deceased, was brought on record.

2. It is the case of the applicant that the deceased respondent had issued a cheque dated 07/07/2005 for an amount of Rs. 90,000/- as repayment of the loan taken on 06/06/2005 from the applicant. Since the cheque was dishonoured, the applicant had moved the Trial Court.

3. Since the widow of the original defendant did not pay the amount to the applicant, he preferred Regular Darkhast No. 66/2008 before the executing Court. The widow moved an application Exhibit 12 on 20/11/2008 contending therein that she has not inherited any property from her deceased husband and, therefore, she is not liable to pay the amount mentioned in the cheque issued by her husband. Application Exhibit 12 was in the form of an explanation filed by the judgment debtor to the execution proceedings.

4. Despite an opportunity granted, the Applicant did not lead evidence. The respondent has led evidence before the executing Court and finally by the impugned order, the executing Court concluded that the judgment debtor did not get the possession of any assets of the estate of the deceased and plot No. 22 which is the property in her name, was not the estate of the deceased- judgment debtor. Being aggrieved by the said order and the dismissal of the execution proceedings by the impugned judgment dated 18/01/2011, the decree holder is before this Court.

5. The learned Advocate for the applicant- decree holder has relied upon the following judgments :-

1] Shanti Devi and others Vs. Ramakrishna Shah, AIR 1994 Orissa 100,

2] Oriental Bank of Commerce, Gwalior Vs. Mrs. Rajran, AIR 2005 Madhya Pradesh 49,

3] Devi Chand Mutsaddi Lal Vs. Rati Ram and other, AIR 1951 Simla 277,

4] Sheikh Hassain Sheikh Mehaboob Vs. Bashir Ahmad Sheikh Mehaboob, 2000 (Supp.) Bom. C.R. 404, (Nagpur Bench),

5] Paack-in-India, Vs. VSR Foods and Beverages Pvt. Ltd., 2011(5) Mh.L.J. 575.

6. I have considered the submissions of the learned advocates for the respective sides and the judgments cited.

7. The issue, therefore, is as to whether the executing Court has rightly come to a conclusion that the widow did not inherit any property from her deceased husband and whether

plot No. 22 was her self-acquired property.

8. It needs mention that the loan was given by the applicant on 06/06/2005 to the original defendant. The original defendant gave a cheque dated 07/07/2005 for an amount of Rs. 90,000/-. A plot No. 22 as per the records before the executing Court was purchased by the widow from her own income by taking loan from the Education Society in 1993. The record before the executing Court did not indicate that the deceased had purchased the said plot or had paid the price for purchasing the plot in the name of his wife.

9. The executing Court has analyzed the oral and documentary evidence in a detailed order. Considering the evidence on record, it does not appear that the decree holder could prove that the widow had inherited some estate of the deceased or had purchased the plot from the money earned by the deceased. The evidence indicates that a sale-deed was signed in between the landlord and the widow for purchasing the plot No.22 on 25/08/1993. The price of the plot was paid through a cheque which was a loan received by the widow

from the Karmachari Patpedhi Sanstha. All these documents have been exhibited before the executing Court. On the basis of such evidence, it was concluded that she had purchased a plot from her own earnings after taking loan.

10. In so far as the judgments cited by the learned Advocate for the applicant are concerned, there can be no dispute with regard to the law laid down therein.

11. In *Shantidevi Case* (*supra*), the learned Division Bench of the Orissa High Court concluded that additional material can be looked into by the Court under Article 227.

12. In *Oriental Bank Case* (*supra*), the Madhya Pradesh High Court concluded that the plea that the legal representative has not inherited any property from the deceased, can be raised by such L.R. by way of a defence in the suit itself.

13. In *Devi Chand Case* (*Supra*), the then Simla High Court concluded that the L.R. should prove that it has not inherited

any money or property from the deceased and such accounts need to be placed on record.

14. In *Sheikh Hassain Case (supra)*, the objection raised by the judgment debtor that he had no title to any suit property, was considered by the Court to conclude that the executing Court cannot go behind the decree.

15. In *Paack-in-India Case (supra)* this Court concluded that once a case was decreed, the executing Court is bound by the decree and cannot go behind the decree.

16. The record indicates that the decree holder had every opportunity to prove before the executing Court as to which are the properties or money that have been inherited by the widow from the judgment debtor. The decree holder, chose not to lead evidence and even by cross-examining the widow, failed to bring on record that she has inherited some property or money which was earned by the deceased husband.

17. The applicant has then placed on record certain

documents to indicate that the widow has settled one matter in the Lok Adalat by entering into a compromise with a person to whom the deceased husband had to pay Rs. 80,000/-. Reliance is placed on the said compromise decree to contend that the widow herein is, therefore, bound to pay the amount to this applicant or compromise the matter with him. It is contended that since the deceased has settled one case with another person, she can very well pay the amounts due to the decree holder. I do not find that this Court can pass such an order directing the widow to settle the accounts with this applicant since she has entered into a compromise in Lok Adalat with another person.

18. The learned Advocate for the decree holder has then contended that the executing Court could not have disposed off the execution proceedings. I find from the impugned order that as it was established that the judgment debtor had not inherited any property of her husband and plot No. 22 was her self-acquired property, the execution proceedings had no reason to be kept pending. The executing Court has, therefore, rightly disposed off the execution proceedings as there is

nothing to recover from the widow of the borrower.

19. In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This CRA being devoid of merit, is, therefore, rejected.

(RAVINDRA V. GHUGE, J.)

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