

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

928 . WRIT PETITION NO.5338 OF 2014

Goba S/o Lalchand Pawar and others ... Petitioner
Versus
Vithabai W/o Shankar Bhojane and others ... Respondents

*WITH
WRIT PETITION No. 3854 of 2014*

Goba S/o Lalchand Pawar and others ... Petitioner
Versus
Vithabai W/o Shankar Bhojane and others ... Respondents

*WITH
WRIT PETITION No. 5339 of 2014*

Goba S/o Lalchand Pawar and others ... Petitioner
Versus
Vithabai W/o Shankar Bhojane and others ... Respondents

*Mr. K.F. Shingare, Advocate for petitioner in all petitions.
Mr. R.R. Karpe, Advocate for respondents No. 1/A, 1/D-1, 1/D-2*

Coram : N.M. Jamdar, J.

Date : 6 December 2018.

ORAL ORDER:

1. Heard the learned Counsel Mr Shingare for the petitioner and the learned Counsel Mr Karpe for the respondents.

2. These three petitions filed by the petitioner/judgment debtor arise from execution of the decree passed in Regular Civil Suit no. 155 of 1999. The respondent No.1/original plaintiff filed the suit being Regular Civil Suit No. 155 of 1999 for declaration, possession and injunction in respect of the suit property an agricultural land situated at village Sitanabi Tanda Taluka Kannad District Aurangabad. The suit was decreed by the learned Civil Judge (Junior Division), Kannad, by the judgment and decree dated 2 August 2003. The petitioner filed Regular Civil Appeal No. 112 of 2009. The appeal was dismissed by the learned District Judge on 17 November 2009. The Second Appeal was filed by the petitioner in this Court, which was dismissed on 1 April 2014. Special Leave petition filed by the petitioner was dismissed by the Supreme Court on 31 January 2017. The respondent/plaintiff filed *Darkhast* proceedings on 4 February 2014 before the Civil Judge (Junior Division), Kannad.

3. During the execution of this decree, the petitioner/judgment debtor sought to raise various objections to stall

the execution. These are negated by the learned Civil Judge by passing three different orders on the three different applications moved, from which the present petitions arise.

4. In Writ Petition No. 5339 of 2014, the petitioner has challenged the order passed by the learned Civil Judge below Exh. 72 in the *Darkhast* proceedings. The petitioner had sought dismissal of the execution proceedings on the ground that the Civil Court has no jurisdiction in view of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. The learned Counsel for the petitioner has reiterated the contentions. There is no substance in this submission. The argument regarding jurisdiction was raised in the concluded proceedings. The argument relating to the Consolidation Scheme was urged before the learned Civil Judge as it is clear from the judgment, as extract of the Consolidation Scheme was marked at Exhibit 64. The learned Civil Judge has, therefore, rightly observed that the matter on merits is concluded upto the Apex Court. Therefore, there is no substance in this writ petition.

5. In Writ Petition No. 3854 of 2014 and Writ Petition No. 5338 of 2014, the petitioner has raised overlapping issues. In Writ Petition No. 3854 of 2014, by the impugned order, the application of

the petitioner to call the Court Commissioner to ascertain identity of the property, is rejected. In Writ Petition No. 5338 of 2014, the petitioner has challenged the order passed of issuance of possession warrant.

6. In both these petitions, the learned Civil Judge has referred to appointment of the Court Commissioner passed below Exh. 37. The Court Commissioner filed his report vide Exh. 65 alongwith the map. The Court Commissioner also submitted a report at Exhibit No. 85. The petitioner has sought to contend that the boundaries in the report of the Court Commissioner and the boundaries in the decree and execution do not match with each other. The learned Civil Judge has rightly criticised this contention as an attempt to postpone the execution proceedings. Merely by creating some suspicion about identity of the property, the execution of decree passed in the year 2003, cannot be deferred. The learned Civil Judge has looked into this contention. He has also looked into the report of the Commissioner and the map. The suit property is categorically identified and some of the names in the report are of unauthorised occupants. The learned Counsel for the respondent/plaintiff has pointed out that the execution application is in consonance with the decree and the description of the property is in the plaint.

7. Apart from this position, it is settled that the decree will have to be executed as it is and as per the schedule. The application to call the Commissioner again to ascertain identity of the property, has been correctly rejected by the learned Civil Judge on the ground that it is only to prolong the matter. The order passed on the possession warrant was kept in abeyance and in furtherance of the same, the order was passed on 21 February 2014.

8. Notices were issued in these petitions in the year 2014. Since various respondents could not be served, the petitions have remained pending and the decree has not been executed.

9. In these circumstances, there is no merit in any of the petitions filed by the judgment debtor. These petitions are nothing but attempt to deprive the respondent/plaintiff from fruits of the decree, after having succeeded throughout in the proceedings upto the Supreme Court. The writ petitions are rejected.

10. Needless to clarify that the learned Civil Judge will ensure that the decree is executed as per the description in the execution application.

N.M. Jamdar, J.