

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9907 OF 2018

SAIDA ALIAS HAJRA KAHAJAMIYA KHATIK AND OTHERS
VERSUS
OSMAN KHAN SADULLA KHAN INAMDAR AND OTHERS

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Advocate for Petitioners : Shri Natu S.V. h/f Shri Gaikwad A.M.
Advocate for Respondents 1 to 4 : Shri Shaikh Mujtaba Gulam Mustafa
Advocate for Respondents 5 & 6 : Shri Khadap R.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 24, 2018

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PER COURT :-

1 The petitioners, who are original objection applicants in R.D.No. 12 of 2016, are aggrieved by the order dated 4.8.2018, by which the objection application Exhibit 58 has been held to be untenable before the Court.

2 I have heard the learned Advocates for the respective sides extensively. There is no dispute that the petitioners are the L.Rs. of Khajamiya, who was plaintiff No.3 in RCS No.91 of 1980, which was decided by judgment and order dated 31.1.1991 and the defendants, their subordinates, agents etc. were restrained from obstructing, interfering or dispossessing them over the suit lands, without following the due course of law.

3 The judgment which is put up for execution in the Darkhast proceedings has been delivered in Waqf Suit No.40 of 2010, decided on 8/9 January, 2013. The two brothers of Khajamiya, namely, Mahmood and Jilani, were arrayed as defendants and Khajamiya was left out. The petitioners, therefore, raised objections in the darkhast proceedings through Exhibit 58. Their dispute travelled upto this Court in Writ Petition No.7732 of 2017. This Court (Coram : V.K.Jadhav, J.) delivered an order on 3.5.2018 and the following directions were issued:-

“(II) The impugned order dated 05.05.2017 passed by the executing Court below Exhibit 60 in Regular Darkhast No.12 of 2016 is hereby quashed and set aside.

(III) The executing court shall frame the preliminary issue of jurisdiction to entertain the objections raised by respondent nos.1 to 7 herein vide objection petition Exhibit 58 in pending Regular Darkhast No.12 of 2016 and decide the said issue as expeditiously as possible, preferably within a period of three months from the date of this order.

(IV) The executing court shall also decide afresh the application Exhibit 19 filed by the petitioners in R. D. No.12 of 2016 for issuance of possession warrant simultaneously with the said preliminary issue.”

4 After hearing the learned Advocates and upon perusing the impugned order dated 4.8.2018, I find that though the executing Court

has discussed the judgments cited at length from page No.3, paragraph No.6 till paragraph No.24 of page 10, the conclusions are drawn in paragraph No.25. I do not find any conclusion, which would amount to implementation of the directions of this Court at Clause (III) reproduced above, except that an issue was cast by the executing Court on 23.7.2018 with regard to whether Exhibit 58 could be entertained by the Court.

5 Learned Advocate for the respondents submits, on instructions, from his client present in the Court that the executing Court may be directed to decide the jurisdiction issue (application Exhibit 58) afresh, but within a specific time frame of 30 days. Learned counsel for the petitioners is agreeable.

6 In view of the above, the impugned order dated 4.8.2018 is quashed and set aside and application Exhibit 58 is remitted to the executing Court in R.D.No.12 of 2016.

7 The litigating sides shall appear before the executing Court and produce a copy of this order obtained from the official website of the Bombay High Court on 31.10.2018. Thereafter, they would address the executing Court on 3.11.2018. Liberty to enter written notes of arguments is granted.

8 The executing Court would then deliver a reasoned order in the light of direction of this Court at clause (III) and the issue framed on 23.7.2018, meaning thereby, that the executing Court shall first decide whether Exhibit 58, containing objections of the petitioners, could be entertained by the Court. If it concludes that these objections can be considered by the Court, it will then proceed to decide the objections set out in Exhibit 58 after hearing all the sides, on the merits of the each objection raised.

9 Since this matter is being remanded for the second time, I find it appropriate to observe that the executing Court shall initially decide only whether it can entertain the objections raised (which are set out in Exhibit 58). Jurisdiction to entertain the objections is not to be construed that the objections will also be decided. As such, if the executing Court holds that it has jurisdiction to entertain the objections, it would thereafter, hear the litigating sides and then consider the merits of the objections in Exhibit 58. The respondents pray for liberty to file a written say in so far as the objections set out in the application Exhibit 58 is concerned. Since a reply has not been filed, leave to file a reply within 30 days from today is granted.

10 Learned Advocate for the respondent submits that these

petitioners are aggrieved to the extent of their purported share of 5 Annas 4 Pai. Excluding this portion of the share, the executing Court may proceed with the execution in so far as the two judgment debtors are concerned, namely Mahmood and Jilani. I keep this issue open for the executing Court to consider, while dealing the fate of application Exhibit 19, concerning the issue of possession warrant. All contentions of the decree holder are kept open to this extent.

11 The learned executing Court shall note that it would implement the direction of this Court at Clause (III), and decide the said issue on it's own merits.

(RAVINDRA V. GHUGE, J.)

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