

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

16 WRIT PETITION NO. 10306 OF 2018

RAMESH SHENFADU PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Vaibhav S. Deshmukh
AGP for Respondent Nos1 and 2: Mr. B. A. Shinde
...

CORAM : V.L. ACHLIYA, J.

DATED : 10th SEPTEMBER, 2018

ORDER :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 01-03-2018 and 26-06-2018 passed in Regular Darkhast No. 9 of 2018 for the reasons set out in the petition.

2. Heard learned counsel appearing for petitioner/judgment debtor. Perused the impugned orders as well as order dated 06-09-2017 passed below Exhibit-76 in the said Execution Proceeding. On due consideration of submissions advanced, I am of the view no case is made out to interfere with orders passed in exercise of writ jurisdiction under Article 227 of the Constitution of India.

3. The fact is not in dispute that decree passed in Regular Civil Suit No. 12 of 1992 has attained finality. By virtue of decree passed vide judgment and order dated 31-08-1998, 1/3rd share in the suit property is to be given to the plaintiff. The proceeding for execution of said decree passed in the year 1998 came to be filed by decree holder vide

Regular Darkhast No. 09 of 1998. By filing application Exhibit-76, the petitioner/Judgment Debtor has objected maintainability of the Execution Proceeding by raising objection as to the executability of the decree with contention that suit property is ancestral property and decree was obtained by fraudulent means and in gross suppression of facts. In nutshell, the execution was objected with contention that the decree was obtained by practicing fraud and concealment of the material facts. The objection raised by the petitioner/Judgment Debtor came to be rejected by passing speaking order on 06-09-2017.

4. After said order dated 06-09-2017, an attempt to stall the Execution Proceeding, the petitioner/Judgment Debtor continued to raise objection and avoided the execution of decree. The objection was raised to measure the land to ascertain share. The measurer could not measure the land due to standing crop of Banana in the field. In order to continue to raise such obstruction, the plaintiff continued to cultivate the land and prevented the Taluka Inspector of Land Records to measure the land. Therefore, the Decree holder filed an application vide Exhibit-98 in said Execution Proceeding seeking preventive order against petitioner/Judgment Debtor from harvesting the land. The application Exhibit-98 came to be allowed on 01-03-2018, which is impugned by way of this petition.

5. The said order passed appears to be challenged by filing appeal before the District Court along with application for delay condonation, which is claimed to be pending. The decree holder filed an application Exhibit-102 to appoint Court Commissioner for the purpose of

measuring the share so as to execute the decree. The said application came to be allowed on 26-06-2018, which is also impugned by way of this petition.

6. Having regard to the orders passed, I am of the view, there is no perversity and illegality in the impugned orders passed by Executing Court. The orders passed also not suffer from jurisdictional error nor can be termed as perverse to call for interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. In absence of perversity and jurisdictional error, I am not inclined to entertain the writ petition. The petition deserves to be dismissed. Accordingly, the writ petition stands dismissed with no order as to cost.

(V.L. ACHLIYA, J.)

MTK.