

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13799 OF 2018

SANKET SUBHASH PAHADE
VERSUS
UTTAMCHAN KISHANCHAND PAHADE AND ORS

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Advocate for Petitioner : Mr. P. G. Godhamgaonkar
Advocate for Respondent No.1 : Mr. S.V. Suryawanshi

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CORAM : N. M. JAMDAR, J.
DATED : 12 DECEMBER 2018

ORAL ORDER:-

1. By this petition, the petitioner has challenged the order dated 20 November 2018 below Exh.75 in Final Darkhast No. 3 of 2011 passed by Civil Judge, Senior Division, Biloli.
2. The Regular Civil Suit No. 71 of 1999 was instituted in the year 1999 and decree has not been executed till date. The petitioner has raised an objection for execution of the decree by making an application below Exh.75 on 25 October 2016. The petitioner sought to claim that he has an independent right in the property and his right has not been considered in the proper perspective and the decree is a nullity. The learned Civil Judge has rejected this application by the impugned order.

3. The learned counsel for the petitioner has placed on record the judgment and order passed in the Regular Civil Suit No. 71 of 1999. The learned counsel has also relied upon the decision of the Apex Court in the case of *Jai Narain Ram Lundia vs. Kedar Nath Khetan and others*¹, to contend that the executing Court has to ensure that the defendant is in a position to perform his part of the decree and the question relating to execution, discharge and satisfaction of the decree needs to be kept in mind. The learned counsel for the respondents decree holders has placed on record a copy of the judgment and order passed in Second Appeal No. 422 of 2014 filed by the petitioner to contend that there are various objections raised to the execution of decree and the decree is not executed for a very long period of which a note has been taken by the Apex Court time and again.

4. The record shows that at every stage the petitioner judgment debtor and the family members have raised some objection or the other to stall the execution of the decree. The objections are raised again even though they have been considered and rejected. The objections which have been raised on behalf of the petitioner by his mother which are dismissed, are conveniently being side tracked on the ground that the mother did not prosecute the litigation properly. The petitioner has also filed Suit No. 23 of 2018 for injunction.

5. The application filed raising the objections makes an

1. AIR 1956 SC 359

illustrative reading. The petitioner has stated that the mother of the petitioner had filed suit for declaration on behalf of the minor petitioner taking a very same grounds which were negatived but the mother was negligent. The learned counsel for the petitioner accepted the position that the objections were raised and rejected but contended that the mother did not prosecute the proceedings properly. This is nothing but yet another attempt to stall the execution of the decree. Merely by stating that the mother was negligent in prosecuting the suit filed on their behalf, the petitioner cannot come out of the findings against him. The second appeal filed against the decision in Regular Civil Suit No. 36 of 2002 is also dismissed. The petitioner has filed one more suit which is pending.

6. The petitioner has invoked the power of superintendence of this Court. It is not for correcting every error that this power is to be exercised. The conduct of the petitioner will have to be taken a note of. This is the second attempt on the part of the petitioner to put-forth the very same grounds. The findings rendered in the suit filed by their mother as guardian are sought to be trivialized on the ground that the mother did not prosecute the suit diligently.

7. In these circumstances, this is not case where the power of superintendence of this Court needs to be exercised. The writ petition cannot be entertained and is accordingly rejected.

8. The learned counsel for the petitioner states that the possession

warrant be stayed for a period of four weeks. Learned counsel for the respondent states that as of today, there is no possession warrant issued and only measurement are complete. In these circumstances, possession warrant be issued only after a period of four weeks.

(N. M. JAMDAR, J.)

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