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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.852 OF 2018

Abbasahab Balwant Patil	...	Petitioner
V/s.		
Akkatai PrakashBhosale		
and ors	...	Respondents

Mr. Shrikrishna R. Ganbavle, for the
Petitioner.

Mr. Abhijit M. Adgule, for respondent Nos. 9
to 12.

Mr. Prashant Bhavake, for the
Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th JANUARY, 2018.

P.C. :

1] Heard learned counsel for both the parties.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 17.9.2016, passed below Exh.97 and order dated 22.12.2017, passed below Exh.137 in Regular Darkhast No.2 of 2008, by the Civil Judge Junior Division, Kurundwad,.

3] The petitioner is a third party and he has filed this application at Exh.97 under Section 47 of the Civil Procedure Code, for impleading him in the Darkhast in order to defend his rights. It is submitted by him that in the year 1974 the husband of the Decree Holder has given the possession of the suit land to the present Petitioner for cultivation of the same. He has thereafter given the said land for cultivation to Rangrao Patil for a period of ten ybears and since then Rangrao Patil was cultivating the same. The decree holder's husband has, therefore, filed suit bearing R.C.S.No.47 of 1988 for getting possession of the suit land against Rangrao Patil and in that suit, petitioner was not joined as party. Now after the death of Rangrao Patil on 30.6.2002, the Petitioner is in actual possession and cultivation of the suit land. Hence he should be impleaded in the execution proceedings.

4] This application came to be resisted by the D. H. contending inter-alia that third party petitioner has no right, title or possession in the suit land. In the earlier proceeding bearing R.C.S. NO.102 of 1987, filed against the petitioner, the petitioner has categorically admitted that the possession of the land is with his brother-in-law Rangrao Patil. In view thereof, interim relief was also refused. Hence thereafter the decree-holder has filed the present suit bearing R.C.S.

No.47 of 1988 against Shri Rangrao Patil and got the decree of possession. In such situation, now petitioner cannot contend that he is in possession of the suit land. Moreover, the petitioner was since beginning very much aware about the pendency of the present suit and the appeal filed against the said decree. But at no point of time, he raised any of these contentions. Now in execution proceeding, he has no right to be impleaded. Accordingly the trial Court has rejected his application at Exh.97.

5] Thereafter, on the application at Exh.137 filed by the Decree Holder, the trial Court, granted police protection for execution of possession warrant.

6] This Writ Petition takes an exception to both these orders and, in my considered opinion, the Writ Petition holds no merit.

7] The perusal of the impugned order passed by the trial Court below Exh.97 reveals that the trial Court has properly considered the aspect that the third party petitioner is the brother-in-law of Rangrao Patil and presently he may be cultivating land on behalf of Rangrao Patil i.e. judgment debtor and hence he being the agent of Rangrao Patil cultivating the land for and on behalf of Rangrao Patil, he cannot raise obstruction to the Execution

Proceeding.

8] The submission of the learned counsel for the petitioner is that the Executing Court has not decided finally rights of the present petitioner. The Executing Court has also not considered the fact that earlier suit bearing R.C.S.No.102 of 1987 is ultimately disposed for want of prosecution in view of the pursis at Exh.24 filed therein by respondent-plaintiff. The Executing Court has also observed that, at this stage, "it may not be considered who is in possession and on what basis he is in possession of the suit property". Hence according to learned counsel for the petitioner, as there is jurisdictional error committed by the Executing Court, this Court should interfere and set aside the impugned order passed by the Executing Court.

9] However, in my considered opinion, the above-said observations made by the Executing Court in paragraph No.6 of the impugned order are taken out of context. What the Executing Court has held is that the present petitioner has clearly stated in the earlier proceeding in R.C.S. No.102 of 1987 that his brother-in-law Rangrao Patil was in possession of the suit land and accordingly, present suit R.C.S. No.47 of 1988 was filed against Rangrao Patil and decree of possession is passed against Rangrao Patil.

10] Now the petitioner is estopped from raising any claim over the suit land when once the suit is disposed off. It was also rightly held that as on today, even assuming that petitioner, who is brother-in-law of the judgment Debtor Rangrao Patil is in possession as his possession is for and on behalf of judgment debtor, then also it cannot be of much relevance. It is therefore a clear attempt made by judgment debtor to protract the Executing Proceeding, especially if one considers the fact that earlier order rejecting the petitioner's application under Section 47 of the Code of Civil Procedure, which was passed on 17.9.2016, is not challenged and it has attained finality. Now after the next order of granting police protection, below application at Exh.137, is passed the present writ petition is filed challenging both the orders.

11] Therefore, on plain reading of both the orders this Court does not find any illegality, much less jurisdictional error.

12] Hence the present writ petition is devoid of any merits and therefore stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]