

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4269 OF 2016

Nandini V. Khare & Ors.	 Petitioners
V/s.	
Dwarkanath Shankar Khare & Ors.	 Respondents

Mr. Mukesh Sirwal for the Petitioners.

Mr. Saurabh Oka for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 8TH MARCH 2018.

P.C. :

1. Heard Mr. Sirwal, learned counsel for the Petitioners, and Mr. Oka, learned counsel for Respondent No.1.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 25th February 2016 passed by the Joint Civil Judge, Junior Division, Thane, below "Exhibit-1" and the application "Exhibit-29" in Regular Darkhast No.378 of 2012.

3. The application at "Exhibit-29" was filed by the present Petitioners, who are Original Judgment-Debtors before the Trial Court.

According to them, in Special Darkhast No.37 of 2002, the partition of the house properties had already taken place and the said Darkhast Proceeding was disposed of as fully satisfied. In view thereof, no second Darkhast Proceeding can be maintainable, as filed by the Respondents - Decree-Holder. Accordingly, the Petitioners had filed the application before the Trial Court, raising objection to the fresh execution of the same 'Decree'. The Trial Court, however, rejected the said application and hence, the instant Writ Petition.

4. In order to understand the contention raised by learned counsel for the Petitioners, it is worthwhile to reproduce the order passed by the Trial Court on 8th December 2011 below “Exhibit-1” in Special Darkhast No.37 of 2002. The said order is reproduced as follows :-

“(1) This proceedings is filed for executon of the decree dated 24.9.1999. As per the decree, the property is to be partitioned and for possession. Accordingly, City Survey Officer, Thane, came to be appoinetd as 'Court Commissioner'. He filed the report at Ex.34. As per his report, suit property has been partitioned and parties are put in possession of their respective share.

(2) No party has taken any objection to this.

(3) Thus, it is seen that the decree has been fully discharged or satisfied. Accordingly, this proceeding has been disposed off. Case papers be filed.”

5. Thus, the perusal of this order makes it more than clear that, in view of the report submitted by the City Survey Officer in the said execution proceedings, who was appointed as 'Court Commissioner', it was noted that the suit property was already partitioned and parties were put in possession of their respective shares. None of the party, including the present Respondents - Decree-Holders, had taken any objection thereto and, therefore, the said Court has categorically passed the order that the 'Decree' has been fully discharged and satisfied. Hence, the Darkhast Proceedings have been disposed of.

6. In such situation, when already the 'Decree' is held to be fully satisfied and hence, the execution proceedings are disposed of, how can a fresh execution proceedings for the same 'Decree' be filed ? The question is, *'whether anything has yet remained to be executed further, when the Trial Court has already held that the partition has been effected in respect of the house property and the parties were also put in possession of their respective shares and none of the parties have taken objection thereto?'*

7. Even as regards the agricultural lands, it is submitted that, the 'Decree' was sent to the Collector and the Collector has carried out partition as per the said 'Decree' and accordingly, the names of the concerned parties are entered in the 'Record of Rights'.

8. In such situation, nothing remained further; at-least, it is not shown what remains further to be executed, when the execution proceedings are already finally disposed of.

9. Learned counsel for the Respondents - Decree-Holders submits that, as this was a 'Preliminary Decree' and 'Final Decree' is not drawn, the Trial Court has rightly allowed the execution proceedings to continue. However, in my considered opinion, this argument could have been accepted, if the parties were not put in possession of their respective shares and the Trial Court has not disposed of the execution proceedings. As everything is over, which was to be done under the 'Decree', this argument no more remains, as it merely appears to be of procedural and technical nature.

10. The impugned order, therefore, passed by the Trial Court, allowing fresh execution application to be filed and continuing such execution proceedings cannot be tenable in law. Hence, the Writ Petition is allowed. The impugned order passed by the Trial Court is quashed and set aside. The execution proceedings filed before the Trial Court stand disposed of as dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]