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

WRIT PETITION NO.12963 OF 2017.

Babasaheb B Khadtare	...	Petitioner
V/s.		
Smt. Mainatai S Shinde and ors	...	Respondents

Mr. Sharad T. Bhosale, for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 18th JANUARY, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner.
- 2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 30th October, 2017, passed by the Civil Judge Junior Division, Barshi, below Exh.45 in Regular Darkhast No.19 of 2010. The said application Exh.45 was filed by the present petitioner, who is judgment debtor, in the Execution Proceeding, to stay the possession warrant issued in respect of City Survey No.302/2 claiming that the said property was not specified in the suit bearing R.C.S.No.8 of 1987 and hence possession warrant cannot be issued in respect of the property which is not clearly specified in the suit. The contention was also raised to

the effect that the judgment debtor No.3 Shankar Bapu Khadtare, has died on 04.05.2015 and his legal heirs are not brought on record. As such the possession warrant cannot be issued against them.

3] However, as rightly held by the Executing Court that the decree passed in R.C.S.No.8 of 1987 is in respect of the property which has been purchased by the Decree Holders vide Sale deed Exh.120 and said sale deed is in respect of property bearing City Survey No.302/2. The perusal of the impugned order passed by the Executing Court also shows that the learned counsel representing the present petitioner has conceded this position before the Executing Court.

4] Even as regards the contention that the legal heirs of judgment debtor No.3 are not brought on record, it was for the present petitioner to give intimation about his death and also the names and address of the legal representatives. However, the petitioner has not done so. It is also not the case of the petitioner that the legal representatives of defendant No.3 are residing in the property bearing City Survey No.302/2.

5] In such circumstances, no case was made out for staying the execution of possession warrant. The impugned order, therefore, passed by the trial Court refusing to grant stay to the possession

warrant is just, legal and fair. No interference is warranted therein.
The petition, hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]