

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

915 WRIT PETITION NO.2031 OF 2018

MARUTI HARI SIRSAT AND OTHERS
VERSUS
KUSUMBAI LAXMAN SIRSAT AND OTHERS

...

Advocate for Petitioners : Mr. Bhumkar R.P.

Mr. Bhavthankar VV, Adv. For R No.1 To 3;
Mr. Pradeep Deshmukh, Adv. h/for Mr. Deshmukh
Yogesh P., Adv. For Resp.No. 5B

CORAM : P.R. BORA, J.
DATED : 25th July, 2019.

PER COURT:-

1. Heard finally with consent of learned counsel for the parties.

2. Order dated 12th January, 2018 passed by the Civil Judge, Junior Division, Kaij, below application at Exh.255 in Regular Darkhast no. 19/2008, is questioned in the present petition.

3. The aforesaid application was filed by present Respondent Nos.1 to 3 seeking their impleadment in the said proceeding. It was the contention of present Respondent Nos.1 to 3 in the

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said application that, since they are the purchasers of the properties, in question, and since their interest has been directed to be protected by this court in a Second Appeal, their presence in the said Regular Darkhast proceeding was necessary. The Trial court has accepted the said contention and has allowed the said application. Aggrieved by, the present petition is filed.

4. Present petitioners are the decree holders. Learned counsel Shri Bhumkar submitted that Respondent Nos.1 to 3 have already filed a substantive suit for protecting their interest. In the circumstances, their presence in the Darkhast proceeding was not at all warranted. The learned counsel further submitted that, in fact, the report has been received under Section 54 of the Code of Civil Procedure, indicating that the execution has been completed. In the circumstances, according to the learned counsel, the trial court has passed an erroneous order. The learned counsel further submitted that another proceeding also has been filed by Respondent Nos.1 to 3 whereby they have

challenged some mutation entries before the Revenue Court. The learned counsel submitted that for one relief, the respondents are availing three remedies, which is impermissible in law. In the circumstances, according to the learned counsel, the impugned order cannot be sustained. He has, therefore, prayed for setting aside the impugned order.

5. Learned counsel Shri Deshmukh appearing for the other respondent, submitted for passing appropriate order.

6. After having considered the submissions, it does not appear to me that there is any scope for causing any interference in the impugned order. The decree holders are not disputing the fact that Respondent Nos.1 to 3 are the purchasers of the properties which are the subject matter of the partition, during pendency of the suit before the civil court. It is further not in dispute that in the Second Appeal, an order has been passed by this court, protecting the interest of the said purchasers. As such, I do not see any reason for

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causing any interference in the impugned order.
The writ petition being devoid of any merit,
deserves to be dismissed and is accordingly
dismissed.

(P.R. BORA)
JUDGE

BDV