

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

915 SECOND APPEAL NO.594 OF 2018
WITH
CA/9007/2018
IN
SA/594/2018

RAJENDRA MADHUKAR PATIL
VERSUS
SMT. JIJABAI VASANT PATIL AND ORS

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Mr. Swapnil S.Patil, Advocate for Appellant.
Mr. S.S.Bora, Advocate for R – 1 & 2.

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CORAM : V.L.ACHLIYA, J.
DATE : 27/11/2019

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ORAL ORDER :

1. Not satisfied with the order dated 30/06/2015 passed in R.D.No. 63/2001 by Civil Judge [Jr.Division], Yawal, District Jalgaon to reject the objection raised u/s 47 read with Order XXI Rule 97 of C.P.C., the appellant/objector preferred Appeal before the District Judge-1, Bhusawal, District Jalgaon bearing R.C.A.No. 46/2015 challenging the legality and correctness of the order dated 30/06/2015 passed by executing Court. Vide Judgment and order dated 08/12/2017 passed by the District Judge-1, Bhusawal, District Jalgaon, the Appeal preferred by the appellant came to be rejected. Being aggrieved the appellant has preferred this Appeal.

2. Heard learned counsel for appellant and respondent. Perused the impugned orders passed by

the trial Court and confirmed in Appeal.

3. I have carefully considered the submissions advanced in the light of Judgment and orders passed by the Courts below. In my view, the Appeal preferred is devoid of merit. There is absolutely no perversity in the order passed by executing Court which is confirmed in Appeal. The Appeal raises no substantial question(s) of law.

4. The appellant/objector i.e. third party raised an objection claiming that the plaintiff in the Suit is not entitled for any share in the suit property. He alleged that the defendant/Judgment Debtor, who is his father, addict to liquor has not properly defended the Suit and acted in collusion with the Decree Holder. He was necessary party to the proceeding.

5. The Order passed by the executing Court and confirmed in Appeal rejecting third party objection raised by appellant/objector is well reasoned and suffers from no perversity. The respondent No. 3, the defendant and father of appellant contested the Suit filed by the plaintiffs i.e. respondent Nos. 1 and 2. The decree passed in Suit has been confirmed by the trial Court. The Second Appeal preferred also dismissed. The entitlement of the plaintiff to claim share in the suit property was duly considered and decided in favour of plaintiff. The Judgment and decree passed by trial Court has confirmed up to this

Court. The appellant is claiming interest in the suit property through respondent No. 3 i.e. the defendant in Suit. The defendant No. 3 also granted share in suit property. The appellate Court can not go beyond decree sought to be executed. The entitlement of the plaintiff to claim share in the suit property has been duly considered decided in favour of plaintiff and confirmed up to this Court. The objection of the appellant found to be frivolous and without any basis. In absence of any perversity in the order passed by the trial Court and confirmed in Appeal as well as absence of substantial question(s) of law, the Appeal deserves no consideration. I am, therefore, not inclined to admit Appeal. The Appeal is dismissed. In view of dismissal of Appeal, C.A. No. 9007 of 2018 stands disposed of.

[V.L.ACHLIYA]
JUDGE

KNP