

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

Second Appeal No. 0286 of 2016

With

Civil Application No. 05076 of 2016

(In Second Appeal No. 0286 of 2016)

District : Latur

Praful s/o. Makardhwaj Kamble,
Age : 25 years,
Occupation : Business,
R/o. Sainath Mobiles & Watch
Repairing Center, Killari Pati,
Taluka Ausa, Dist. Latur.

.. Appellant
(Objector
in R.D.)

versus

Venkat Parbatrao Hande
(Died through his L.Rs.),
Mahadeo s/o. Venkat Hande,
Age : 40 years,
Occupation : Agriculture,
R/o. Sirsal, Taluka Ausa,
District Latur,
& others.

.. Respondents
(Nos.1/1 to
1/3 - Original
decree holders
&
Nos.2 to 6 -
Original
judgment
debtors)

.....

*Mr. A.P. Wakode, Advocate, for the appellant
(Absent).*

*Mr. S.N. Lale Yelwatkar, Advocate, for respondents
no.1-1 (caveator).*

Respondents no.1/2, 1/3, 2/1, 2/3, 4 & 6 served.

*Mr. S.B. Bhosale, Advocate, for respondents
no.3/2 and 3/3.*

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21ST FEBRUARY 2019

ORAL ORDER :

01. By order dated 30th June 2016, the appellant was directed to supply new addresses of the respondents who were unserved. Thereafter, by way of last chance, the appellant sought time on 29th July 2016. However, till today, addresses have not been supplied of the respondents no.2/2, 2/4, 3/1 and 5. Considerable time of about two years has been consumed by the appellant who want to challenge certain orders from execution petition. He is the objector in Regular Darkhast No. 12 of 2010 pending before learned Joint Civil Judge (J.D.), Ausa, District Latur. There is no stay or any order operating in favour of the appellant. In spite of that, the appellant has not taken any steps to serve the unserved respondents. Under such circumstance, the appeal stands dismissed as against them.

02. By way of objection, the appellant had prayed for excluding the property i.e. Grampanchayat House No. 224 admeasuring 8 X 33 feet out of Survey No.69 situated at village Killari Pati, Taluka Ausa, from determining it. That means, in short, he prayed for deleting that property from execution proceedings. His said objection at Exhibit 37 was rejected by the executing court and in appeal filed

by him, the said appeal was dismissed. What was tried to be executed by the decree holders was a joint and several decree as the suit which was filed i.e. Regular Civil Suit No. 244 of 1982 was for recovery of possession. Now, when the present appeal is dismissed as against those respondents against whom steps have not been taken, under such circumstance, the second appeal cannot proceed as against other respondents, in order to avoid a contradictory finding.

03. In the light of above, the second appeal, as a whole, is hereby dismissed. Consequently, the civil application does not survive and it is disposed of.

(Smt. Vibha Kankanwadi)
JUDGE

.....