

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

**WRIT PETITION NO. 6664 OF 2019**

**DAGU GANGADHAR DONGRE  
VERSUS  
GOPINATH MAHADU THORE THROUGH LRS CHATURABAI  
GOPINATH THORE AND OTHERS**

...

Advocate for the Petitioner : Shri R. N. Chavan h/f.  
Shri V. A. Bagdiya

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**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 13<sup>th</sup> SEPTEMBER, 2019.**

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***PER COURT :***

1. The petitioner, judgment debtor No. 4, who was the original defendant No.4 in Regular Civil Suit No. 224/1982, is aggrieved by the order dated 29/03/2019 passed by the executing Court, by which, his application Exhibit 77 in Regular Darkhast No. 38/2009, has been rejected.

2. I have considered the extensive submissions of the learned Advocate for the petitioner. He has drawn my attention to the panchanama and the decree passed by the Trial Court. The decree has been sustained right up to the High Court.

3. Defendant Nos. 2 to 5 had claimed a right in the suit property. The Trial Court had framed issue No.4(b) as "Do the defendant Nos. 2 to 5 prove that they have shares in the suit property ?" This issue was answered in the negative by the Trial Court and the said conclusion has been sustained up to the Second Appeal level.

4. The petitioner had raised an issue vide application Exhibit 77 under Order XXI Rule 97 of the Code of Civil Procedure that after the passing of the decree and after the death of some of the litigating sides, a sale-deed was executed on 23/04/2012 in favour of decree holder Nos. 1 to 6. A dispute is raised with reference to the map drawn on 19/03/2013 and another map which is drawn on 16/01/2015. The executing Court has considered the fact that this issue was raised by the petitioner even earlier and that issue was settled by an order of the executing Court.

5. It appears that the litigation between the parties is now practically 37 years of age and the execution proceedings are

pending for the last 10 years. Merely because a different view could be formed, cannot be a ground for this Court to interfere in the impugned order which is likely to cause more injustice to the decree holder in view of the pendency of the execution proceedings.

6. At this juncture, the learned Advocate for the petitioner prays for withdrawal of this petition.

7. This Writ Petition is disposed off as withdrawn.

**(RAVINDRA V. GHUGE, J.)**

shp/-