

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10121 OF 2019

Sayyad Shabab Akthar Ashfaqmiya ...Petitioner

Versus

Kautik Pila Chaudhary (Died through Lrs) ...Respondents
& Ors.

.....
Mr. M.K.Deshpande, Advocate for the Petitioner.
.....

CORAM : **RAVINDRA V. GHUGE, J.**
DATE : **14-08-2019.**

PER COURT :

01. The petitioner is a third party, who is aggrieved by the Order dated 6.7.2019 passed by the Executing Court by which application Exh. 222 filed in Regular Darkhast No. 100/1976 has been rejected with costs.

02. The learned Advocate for the petitioner has strenuously criticized the impugned Order. He contends that he is in possession of the agricultural land Gut No. 75 (Old survey No. 51/2) admeasuring 1H 40R land situated at village Marul, Tq. Yaval, Dist. Jalgaon. The land is in his possession on the basis of the partition that took

place earlier. Respondent No. 1-B threatened the petitioner on 7.2.2019 that he should hand over the possession of the suit land and therefore, the petitioner preferred R.C.S. No. 19/2019.

03. The respondents are the decree holders by Judgment of the Trial Court in R.C.S. No. 124/1961. They have already initiated the execution proceedings and the petitioner herein moved an application contending that the decree in the 1961 suit is not binding upon the petitioner and that the decree was obtained by the fraud. It was therefore, prayed that the execution proceedings be stayed. Grievance is that the petitioner has filed specific proceedings in the form of a civil suit and his rights are involved in the suit property which is put up for execution.

04. The record reveals that the Executing Court has earlier decided two similar objection applications. Those two applications were rejected. Civil Revision Application No. 52/2003 against one such Order passed below Exh. 142, led to the dismissal of the CRA and the Order below Exh. 142 was confirmed.

05. Record also reveals that Judgment debtor No. 2 had earlier filed R.C.S. No. 34/1997. No relief was granted in the said proceedings and that was followed by

the applications being filed . The petitioner is the LR of JD No.2

06. The record also reveals that the possession of the field in gut No. 75 was earlier considered by the Trial Court and the decision was not interfered with by this Court in the said CRA No. 52/2003 which was rejected by Judgment dated 5.10.2015.

07. In view of the above, this petition is apparently aimed at stalling the execution of a decree which was delivered in a suit 58 years ago and the execution proceedings are pending for the last 43 years. As such, I do not find that the Trial Court has committed any error in dismissing the application Exh. 222 by imposing cost of Rs. 10,000/-.

08. I find it appropriate to raise the said cost to Rs. 25,000/- and the petitioner shall deposit the amount of Rs. 25,000/- with the Executing Court, inclusive of the earlier costs granted and the Executing Court would then credit the said amount with the Govt.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-