

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10314 OF 2014

Puja d/o Deepak Chitte
& another

Petitioners

Versus

Manjusha w/o Sanjay Brahme
& others

Respondents

Mr. P.S. Paranjape, Advocate for the petitioners.
Mr. V.D. Gunale, Advocate for respondent no. 1.

CORAM : M.S. KARNIK, J.
DATE : 19th August, 2019.

PER COURT :

1. Petitioners are challenging the order dated 18.08.2014 passed by the trial Court below Exhibit 76 in Special Darkhast no. 48/2011.

2. Learned counsel for the petitioners points out that the petitioners-sisters are the daughters of Varsha. The grand father of petitioners namely Kamlakar Shankar Brahme expired on 31.01.1987. Varsha, mother of the petitioners, died on 19.07.2003.

3. Respondent no. 1 Manjusha, who is the maternal aunt of the petitioners, filed Special Civil Suit No. 94/2007 for partition and separate possession. Respondents no. 2 and 3 who are the maternal uncle and grand mother of petitioners had taken a plea before the trial Court that the suit is bad on account of non-joinder of necessary parties. Trial Court had framed specific issue

as to whether the suit deserves to be dismissed on the ground of non-joinder of necessary party. Trial Court rendered a finding that Varsha married in the year 1987 i.e. prior to 1994 and therefore, she is not entitled to a share in the suit property. It is in this view of the matter, that the trial Court found that the petitioners are not necessary party to the suit.

4. Now, during the course of execution, an application is moved by petitioners that the trial Court has committed an error in rendering finding that their mother Varsha was not a necessary party. According to the learned counsel for the petitioners, Varsha was very much necessary party. He would invite my attention to section 47 and order I Rule 10 of the Code of Civil Procedure to contend that the question raised by petitioners can only be determined by the Executing Court.

5. I have heard learned counsel for the respondents and also have gone through the the order passed by the Executing Court. The trial Court had rendered a finding that Varsha has no share in the suit property and consequently, her daughters viz. petitioners are not necessary party to the said suit. The only remedy available for the petitioners is either to challenge the said judgment and decree before the appropriate forum or file a separate suit as may be permissible. However, during the course of execution, it will not be permissible for the petitioners to raise a plea that the finding rendered by the trial Court that petitioners are not necessary party is incorrect.

6. In my opinion, the order passed by the Executing Court that

the Executing Court cannot go behind the decree, does not call for any interference. Petition is accordingly dismissed.

(M.S. KARNIK, J.)

dyb/