

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

WRIT PETITION NO. 14414 OF 2018

**PRAKASH NATHA JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO. 14416 OF 2018**

**DATTATRAYA BHAGWANT JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO. 14417 OF 2018**

**SURESH S/O MANOHAR JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO. 14419 OF 2018**

**TUKARAM VITHALRAO JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioners : Shri D. A. Bide
AGP for Respondent Nos. 1 and 2 : Shri S. R. Yadav - Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 15th MARCH, 2019.

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PER COURT :

1. The contention of the petitioners, who are identically placed in these petitions is that their suits were decreed by judgment and order dated 08/12/2009 by the learned Civil Judge Senior Division, Osmanabad. Special Darkhast No. 188/2014 (old No. 84/2013), was filed at Osmanabad. The Civil Court which decided the suit while established at Osmanabad, is now created at Bhoom. Some of the properties of the judgment debtors are situated at Bhoom and Osmanabad.

2. After the Civil Court was created at Bhoom, the execution proceedings initiated by these petitioners in 2013, were transferred to the learned Civil Judge Senior Division, Bhoom and were re-numbered. Thereafter the petitioners moved applications praying for issuance of notices to the respondents who are judgment debtors, in the execution proceedings. The Trial Court, by passing the impugned order, refused to issue notice to the judgment debtors on the ground that the addresses of both the judgment debtors are of Osmanabad and the Court established at Bhoom is only for

Taluka Bhoom and Washi.

3. I quite agree with the view taken by the Trial Court to the extent that Section XXXIX (4) of the Code of Civil Procedure would not vest jurisdiction in the executing Court unless the Court which delivered the judgment and decree can exercise jurisdiction in the said area and especially to the extent of the properties situated within the local limits of its jurisdiction.

4. However, I find that when the executing Court passed the impugned order, the issue that the Court which delivered the judgment and decree while being at Osmanabad, was now transferred to Bhoom to the extent of the litigation for the Talukas of Bhoom and Washi, was not brought to the notice of the executing Court.

5. The learned Advocate for the petitioners submits that he would either make a fresh application before the executing Court for issuance of notices to the judgment debtors by identifying their properties which are situated only at Bhoom

which would fall within the jurisdiction of the local limits of the executing Court or press the applications, on remand, only to the extent of the properties at Bhoom.

6. In view of the peculiar facts as recorded above, these petitions are allowed. The impugned orders dated 05/10/2018 are quashed and set aside. Application Exhibit Nos. 29, 26, 26 and 28 in the four execution proceedings shall stand restored to the files in Special Darkhast Nos. 188/2014, 189/2014, 187/2014 and 186/2014.

7. Needless to state, the executing Court would once again consider these applications in the light of the statements recorded above and pass fresh orders after hearing the litigating parties. The statement of the petitioners that they would identify the properties of the judgment debtors within the local limits of Taluka Bhoom for the purposes of the execution proceedings, is recorded.

(RAVINDRA V. GHUGE, J.)

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