

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3399 OF 2019

Meerabai Chandrahas Vernekar and Ors. ...Petitioners
vs.
Laxmibai Balkrishna Palankar and Ors. ...Respondents

Mr. K.J. Patil, for the Petitioners
Mr. R.R. Salvi a/w. Ms. Suvarna Telgote, for Respondents

CORAM : M. S. SONAK, J.

DATE : MARCH 25, 2019

P.C.:

. Heard Mr. Patil, learned counsel for the Petitioners and Mr. Salvi, learned counsel for the Respondents-decree holders.

2. The challenge in this Petition is to the order dated 5th January, 2019 by which the executing Court has rejected the Petitioners' objection on the execution of the decree in Special Civil Suit No. 7 of 2015.

3. Mr. Patil, learned counsel for the Petitioners/Objectors submit that the decree in question was a consent decree. He submits that in terms of the decree, the judgment debtor was required to pay the decree holder amount of Rs. 36 lakhs failing

which the decree holder was to retain property bearing survey No. 8069. He submits that in the execution of the decree, the executing Court has proceeded against the property bearing survey No. 533/1, which is ex-facie impermissible. He submits that executing Court is traveling beyond the scope of decree. Mr. Patil submits that in any case, the judgment debtor is not the owner of the property bearing survey No. 533/1 but it is the Objectors who are the owners and in any case, the co-owners of the said property. He submits that there has been no partition between the objectors and the judgment debtor and therefore the executing Court has clearly exceeded its jurisdiction in making the impugned order.

4. Mr. Salvi, learned counsel for the decree holder defends the impugned order on the basis of reasoning reflected therein.

5. In this case, decree undoubtedly requires judgment debtor to pay the amount of Rs. 36 lakhs to decree holder. Mr. Salvi has pointed out that though attempts were made that auctioning the property bearing survey No. 8069, such attempts were not successful. Therefore, execution was levied against property bearing survey No.533/1 which belongs to the judgment debtor.

6. The record indicates that the objectors and the judgment debtor were co-owners in respect of survey No. 533/1. However, by a Deed of Partition dated 8th May, 2015, the co-owners have partitioned their shares and the property bearing survey No. 533/1 stands allotted to the judgment debtor. The record also indicates that the objectors approached the executing Court with a false case and suppressed the Partition Deed. Such suppression should have been viewed by the executing Court seriously and on noticing such suppression, not only rejected the objection, but also imposed exemplary costs upon the objectors.

7. Mr. Patil, learned counsel for the Petitioners now seeks to explain that Partition Deed was executed for a limited purpose and the same was never really acted upon. He submits that no changes have been effected in the survey record. He submits that the Partition Deed has not been registered. On all these basis, he submits that the impugned order warrants interference.

8. The explanation now offered by Mr. Patil cannot be accepted. It was the duty of the objectors to have disclose all facts to the executing Court. It was the duty of the objectors to have place on

record the Partition Deed themselves and thereafter offer explanation. Instead, the objectors chose to approach the executing Court with false case and suppressed the Partition Deed. In any case, the impugned order notes that the Petitioners have themselves on the basis of Partition Deed and even sold a portion of the property acquired by them under the Partition Deed to a third party.

9. Thus construed it cannot be said that there is any infirmity in the impugned order made by the executing Court. In the meanwhile, even the auction has taken place and the auction purchaser has deposited the amount. At the behest of the Petitioners who approached the executing Court with a false case and suppressed the material documents, it is not possible to set the clock back.

10. Accordingly, this Petition is dismissed with cost of Rs. 10,000/- payable within four weeks to the decree holder.

(M. S. SONAK, J.)