

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1086 OF 2017

Ulhas R. Dongare and anr. .. Petitioners

vs.

Alka A. Dongare
(since deceased deleted) and ors. .. Respondents

Mr. Jaydeep Deo for the Petitioners.

Ms Teja Katdare for Respondent Nos.2,3 and 4.

Mr. Mahesh Subramaniam I/b Mr. S.V. Pitre for Respondent
Nos.5A to 5D.

WITH

WRIT PETITION NO. 11559 OF 2018

Vinayak M.Dongare

(since deceased through Lrs.) and ors. .. Petitioners

vs.

Achyut M. Dongare

(since deceased through

Lrs. and ors.) and ors.

.. Respondents

Mr. Mahesh Subramaniam I/b Mr. S.V. Pitre for for the
Petitioner.

Ms Teja Katdare for Respondent Nos.2,3 and 4.

CORAM : M. S. SONAK, J.

DATE : 24 APRIL 2019.

ORAL JUDGMENT :-

1] In Writ Petition No. 1086 of 2017, leave is granted to the petitioners to amend the petition so as to state the correct Darkhast number, which is “**4 of 2012**” and not 3 of 2012. Leave is also granted to carry out consequential amendment in the prayer clause. Amendment to be carried out forthwith.

2] Heard learned counsel for the parties in both the petitions.

3] Learned counsel for the parties state that the challenge in both these petitions is to separate, but identical orders dated 22nd April 2016 made by the Executing Court staying the execution proceedings till the decision in Second Appeal No.1155 of 2004 pending before this Court and in view of the Orders dated 26th September 2005 made in the second appeal. Accordingly, they agree that both these petitions can be taken up and disposed of together.

4] The execution proceedings which have been stayed by the impugned orders arise out of decree made in Regular Civil Suit (R.C.S.) No. 30 of 1989 seeking partition of landed property in Raigad District and house property in Pune City. In R.C.S. No. 30 of 1989, the parties were Ramchandra, Vinayak and Achyut or their legal representatives. The learned counsel who now appears for the respondents points out that all the legal representatives were not parties to R.C.S. No. 30 of 1989. In particular, she points out that Alka

and Arpita, who were the legal representatives of Achyut were not parties to R.C.S. No. 30 of 1989. R.C.S. No. 30 of 1989 was disposed of on the basis of compromise decree vide dated 12th September 1990.

5] The record indicates that the said compromised decree was never challenged by any parties, including Alka and Arpita.

6] In the year 1992, some dispute arose between the legal representatives of Vinayak and legal representatives of Achyut in the context of right of way to the house property in Pune city. Accordingly, the legal representatives of Vinayak instituted R.C.S. No. 207 of 1993 seeking declaration and injunction in the context of right of way to the house property in Pune. In this suit, reliance was placed upon compromise decree dated 12th September 1990 in R.C.S. No. 30 of 1989. In this suit, the legal representatives of Ramchandra were not parties.

7] In the year 1994 and in the year 2001, the present execution proceedings numbered as R.D. Nos.3 of 2012 and 4 of 2012 were taken out. The impugned orders have been made in these execution proceedings.

8] On 11th October 1999, R.C.S. No. 207 of 1993 was decreed. Civil Appeal No. 829 of 1999 filed by the legal representatives of Achyut, i.e., Alka and Arpita and others came to be dismissed by the first Appellate Court vide judgment and decree dated 9th July 2004. Second Appeal No. 1155 of 2004 instituted by the legal representatives of Achyut had been admitted by this Court on 26th September 2005 and therein, stay has been granted to the execution of said judgment and decree dated 11th October 1999 in R.C.S. No. 207 of 1993.

9] The impugned order stays the execution proceedings, i.e., R.D. Nos.3 and 4 of 2012 by reference to this Court's order dated 26th September 2005 in Second Appeal No. 1155 of 2004. Neither in the applications by which the respondents applied for stay on the execution proceedings

nor the impugned orders referred to any provisions of law on the basis of which the execution of decree in R.C.S No. 30 of 1989 has been stayed. This was necessary because the parties, who seek stay of execution proceedings have to be clear as to the provisions under which they seek such a stay.

10] The provisions, *inter alia*, are contained in Order 21 Rule 26 and Order 21 Rule 29 of CPC. Unless, the parameters prescribed in the said provisions are fulfilled, there is no question of staying execution proceedings. Be that as it may, from the record, it is quite clear that the execution proceedings in R.C.S. No. 30 of 1989 were not required to be stayed on account of admission and grant of interim reliefs in Second Appeal No. 1155 of 2004, which, admittedly, challenges the judgment and decree in R.C.S No. 207 of 1993. The heirs of Ramchandra are not even parties to R.C.S. No. 207 of 1993 and consequently to Second Appeal No. 1155 of 2004.

11] Even the issues involved in the two suits are not identical, but rather the same are different. The issue

involved in R.C.S. No. 30 of 1989 was concerned with partition of property in Raigad District and the house property in Pune City. The issue involved in R.C.S. No. 207 of 1993 related to the access to the house property in Pune. This was basically dispute between the legal representatives of Vinayak and legal representatives of Achyut with which, the legal representatives of Ramchandra were totally unconcerned.

12] Besides, this Court by its order dated 2nd February 2018 in Civil Application No. 597 of 2017 taken out in Second Appeal No. 1155 of 2004 has also made it clear that the proceedings in Darkhast Application No.3 of 2012 arise from a decree passed in a different suit. Darkhast proceedings are not filed for execution of the decree which is under challenge in Second Appeal No. 1155 of 2004. In fact, by the said order, this Court granted liberty to challenge the impugned orders, which are subject matter of the present petitions.

13] The execution proceedings are required to be concluded expeditiously. If any of the parties have any objections to the execution proceedings, no doubt, they are entitled to raise the same and such objections will have to be considered by the Executing Court. This is in the context of submissions made by Ms Katdare, learned counsel for the respondent Nos.2,3 and 4 that the legal representatives of late Achyut were not even parties to R.C.S. No. 30 of 1989. At this stage, it is not for this Court to rule upon the objections, which any of the parties may have to the execution proceedings. However, this was not a fit case to stay the execution proceedings in the manner which they have been stayed.

14] The impugned orders are in excess of jurisdiction and consequently, are hereby set aside. The Executing Court is directed to proceed with the execution proceedings in accordance with law and on their own merits. If any of the respondents or for that matter any of the parties have any objections to the execution proceedings, they are at liberty to raise the same and if raised they shall be dealt with by the Executing Court on their own merits and in accordance with

law. However, as noted earlier, there was no case made out for stay of the execution proceedings pending disposal of Second Appeal No. 1155 of 2004. Therefore, the impugned orders are hereby set aside.

15] Rule is accordingly, made absolute in these petitions in the aforesaid terms. At the same time, liberty is granted to the parties to raise their objections and if such objections are raised, the Executing Court shall consider the same and dispose of the same, on their own merits and in accordance with law. The Executing Court is directed to dispose of the execution proceedings as expeditiously as possible, taking into consideration the fact that the decree which is sought to be executed was made way back in the year 1990.

(M. S. SONAK, J.)