

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7078 OF 2018

Jagannath K. Nangare and ors. .. Petitioners
vs.
Anna Appa Mang
(Deceased through Lrs.and ors.) .. Respondents

Mr. Manoj Patil for the Petitioners.

CORAM : M. S. SONAK, J.
DATE : 24 APRIL 2019.

P.C. :-

- 1] Heard Mr. Patil, learned counsel for the petitioners.
- 2] The challenge in this petition is to the order dated 1st November 2017 by which the learned Executing Court had dismissed the petitioners' application to stay the execution proceedings.
- 3] This Court, whilst disposing of Writ Petition No. 5098 of 2015 instituted by the petitioners herein, in its order dated 17th July 2017 had made it expressly clear that the possession of the suit premises shall not be handed over for a period of six months during which the Collector had to clear the work of measurement and fixing of the shares or till the application of the petitioners pending before the

Executing Court was disposed of. This Court had made it clear that contingencies were in the alternate and which ever contingencies occurred earlier, the same was required to be taken into consideration.

4] The record indicates that the Collector has completed the measurements and fixing of the shares within the period prescribed. Therefore, on the ground that application an execution proceedings is pending, the Executing Court could not have refrained from handing over the possession of the suit premises to the decree holder. In fact, if the Executing Court were to have done so, then the Executing Court would have acted contrary to the directions of this Court in its order dated 17th July 2017.

5] In this petition, it is not possible for this Court to virtually review the directions issued in Writ Petition No. 5098 of 2015 which is already disposed of. There is no jurisdictional error in the view taken by the Executing Court.

6] Mr. Patil's contention that the application before the Executing Court will become infructuous is not correct. Even if the possession handed over to the decree holder that does not mean that application becomes infructuous. If ultimately, the petitioners are able to establish the independent rights to the suit premises, it is always possible for the petitioners to seek restitution.

7] With the aforesaid observations, this petition is dismissed. There shall be no order as to costs.

8] Needless to add that pending proceedings will have to be disposed of on their own merits and in accordance with law.

(M. S. SONAK, J.)