

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9689 OF 2016

Anjali E. Pokharkar .. Petitioner
vs.
Anantha V. Rajguru and anr. .. Respondents

Mr. D.S. Patil for the Petitioner.
Mr. U. B. Nighot for the Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 30 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. D.S. Patil, learned counsel for the petitioner and Mr. Nighot, learned counsel for Respondent No.2.

2] The record indicates that respondent No.2 is the main contesting party so far as this petition is concerned. This is because the impugned order has been made on the basis of application made by respondent No.2 and respondent No.2 has been impleaded as respondent to the execution proceedings taken out by the petitioner.

3] Accordingly, Rule. Rule is made returnable forthwith with the consent of and at the request of learned counsel for the parties.

4] The record indicates that the petitioner is a decree holder, who had a decree for specific performance as against respondent No.1. It is the case of the respondent No.2 that respondent No.1 had already agreed to sale the suit property in favour of respondent No.2. It is also the case of the respondent No.2 that it is respondent No.2 who is in possession of the suit property.

5] On the aforesaid basis, respondent No.2 took out an application obstructing to the execution of decree and in the said application, he also prayed that he be joined as the party to the execution proceedings. Learned Trial Judge has made the impugned order dated 10th February 2016 which reads thus:

*“Heard parties to the proceedings.
Perused relevant record of the proceeding. On going through the objection petition, it appears that this person by name Namdev son of Shankar Vabale is necessary Party to present proceeding and he deserves to be added as Objector in the present proceeding. Therefore, decree holder is hereby directed to do necessary amendment in the present proceedings within limitation.”*

6] According to me, there is no question of respondent No.2 being impleaded as a party in the execution proceedings

for execution of decree obtained by the petitioner against respondent No.1. The impugned order is therefore, required to be set aside and is hereby set aside.

7] In case, the respondent No.2 has any objection to the execution of the decree or chose to obstruct the execution of decree, then it is always open to respondent No.2 to take out appropriate proceedings for obstruction of the decree. Mr.Nighot submits that in fact the application taken out by respondent No.2 seeks to obstruct the execution of the decree. If this be so, then learned Trial Judge is directed to consider and dispose of said application treating the said application as application seeking obstruction of the decree. However, for that reason, there is no necessity of respondent No.2 being formally made a party respondent in the execution proceedings. The obstruction applications, according to Mr. Nighot, are dated 30th March 2015 and 26th August 2015, (Exhibit-E at page 34 and Exhibit-I at page 52 to this petition). Although, the impugned order is hereby set aside, the Executing Court is directed to dispose of both those applications by treating both those applications as

applications seeking obstruction of the decree, in accordance with law and on their own merits. All contentions of all parties on merits are expressly kept open.

8] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

9] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)