

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10766 OF 2015

Baburao Jayvantrao Pawar

...Petitioner

vs.

Ravindra Krishnarao Pawar

(since deceased through legal heirs)

...Respondent

Mr. Sushsil Inamdar, for the Petitioner

None for the Respondent

CORAM : M. S. SONAK, J.

DATE : MARCH 13, 2019

P.C.:

. Heard Mr. Inamdar, learned counsel for the Petitioner.

2. The challenge in this Petition is to the order dated 24th June, 2014 by which the learned executing Court has dismissed the Application of the judgment debtor application resisting the execution of the decree.

3. Mr. Inamdar submits that the suit property is affected by the provision 8AA of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (said Act). He submits that in terms of Section 8AA of the said Act, even if such decree is passed,

such decree cannot be executed without the previous permission of the Collector for effecting the partition. He submits that the Petitioner is ready and willing to pay market price for the disputed land to the decree holder. On this ground, he submits that the execution proceedings are to be dismissed.

4. Upon due consideration of the aforesaid contentions of Mr. Inamdar and upon perusal of the impugned order, according to me, no case is made out to warrant interfere in the impugned order. The fact that the Petitioner is willing to pay the market value in respect of disputed land is not any equal ground to drop the execution proceedings. On the basis of such ground, the decree which has already attained finality, cannot be set at naught.

5. In so far as the ground based on the provision of the said Act is concerned, in the first place, there is absolutely no clarity as to why the provision of the said Act are at all attracted to the present case. Secondly, the Petitioner has not clarified as to why the decree in the present case, contravene the provision of the said Act. Thirdly, as observed by the executing Court, said Act does not bar the execution of the decree but only insists that prior permission

from the Collector may be necessary in case the execution of the decree, contravenes the provision of the said Act .

6. From the perusal of the Section 8AA of the said Act, it is clear that where by transfer, decree, succession or otherwise, two or more persons are entitled to shares in an undivided agricultural land in any local area for which standard areas have been fixed and the land has to be partitioned among them, such partition shall be effected so as not to create a fragment. Section 8 A A (2) of the said Act inter alia provides that where such partition is made by the Court or the Collector in effecting a partition among several co-sharers, it is found that a co-sharer is entitled to a specific share in the land and cannot be given that share without creating a fragment, he shall be compensated in money for that share. The amount of compensation shall be determined so far as practicable in accordance with the provisions of section 23 of the Land Acquisition Act, 1894.

7. Thus, even from the reading of Section 8 AA of the said Act, it cannot be said that there is any bar to the execution of the decree.

8. Accordingly, there is no case made out to interfere with the impugned order.

9. This Petition is liable to be dismissed and is hereby dismissed.

10. Since the execution proceeding are pending since last several years, the executing Court is directed to dispose of the execution proceeding as expeditiously as possible but in any case within a period of four months from today.

11. The Petitioner to place a copy of this order before the executing Court within a period of two weeks from today.

(M. S. SONAK, J.)