

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6567 OF 2019

Trimbak s/o Yadaorao Khaty, Abaji Sadan, Sundervan, Narendra Nagar, Nagpur

-vs-

Vishambhari w/o Dhaluram Vensiyani and ors.

WITH

WRIT PETITION NO.6569 OF 2019

Trimbak s/o Yadaorao Khaty, Abaji Sadan, Sundervan, Narendra Nagar, Nagpur

-vs-

Ashok s/o Wasudeo Vensiyani and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri B. N. Mohta, Advocate for petitioner.
Shri S. S. Sitani, Advocate for respondent Nos.1 to 3 in
W.P.No.6567/2019 and for respondent No.1 in
Respondent No.4 in W.P.No.6567/2019 and respondent
No.2 in W.P.No.6559/2019 are served.

CORAM : A. S. CHANDURKAR, J.

DATE : November 11, 2019

Common order :

Since identical challenges arise in these writ petitions, they are being decided together by this common order.

The predecessor of the respondent-Ashok had filed Special Civil Suit No.186/2000 for specific performance of an agreement to purchase shop block No.2. That suit came to be partly decreed and the defendant was directed to refund the earnest amount. The plaintiff then filed Regular Civil Appeal No.218/2012 and the appellate Court by its judgment dated 30/12/2015 allowed the appeal and passed a decree

for specific performance. The defendant was directed to execute a sale-deed of the suit block in favour of the plaintiff. That decree passed by the appellate Court was affirmed by this Court in Second Appeal No.286/2018 and the Special Leave Petition as filed was also dismissed on 27/01/2017.

The said decree was sought to be executed. The legal heirs of the original-defendant objected to the execution of that decree by filing objection before the executing Court. Since the objection as raised to the executability of the said decree was not accepted by the executing Court, the objectors had approached this Court by filing Writ Petition No.6967/2018 and 6979/2018. By judgment dated 10/04/2019 both the writ petitions were dismissed. Thereafter the objectors raised further objection before the executing Court and the draft sale-deed which was submitted by the decree-holder was objected to. By the impugned order the executing Court in Special Darkhast No.100/2016 has held that the judgment-debtor should execute the sale-deed with regard to the two suit shop blocks from his half share of property bearing NMC No.260. It was further observed that the legal heirs of the widow of the original defendant-Shakuntalabai including the objectors would have half undivided share in the property bearing NMC No.260. That property would not be liable for execution in the decree passed in Special Civil Suit No.208/2000. That order has been challenged in Writ

Petition No.6567/2019.

A similar order passed in Special Darkhast No.94/2016 is the subject matter of challenge in Writ Petition No.6569/2019.

2. Shri B. N. Mohta, learned counsel for the petitioner submitted that in the absence of there being any partition of the suit property bearing No.260 the decree passed for specific performance could not be executed. Each objector had an undivided share in the suit property and without determining that share the decree could not have been executed. Relying upon the decision in *Ramdas vs. Sitabai and ors. (2009) 7 SCC 444* it was submitted that the executing Court ought to have entertained and adjudicated the objection on merits. The decree-holder ought to have sued for partition. He also placed reliance on the decision in *M.V.S. Manikayala Rao vs. M. Narasimhaswami and ors. AIR 1966 SC 470* and order dated 11/02/2019 passed in Civil Application No.12674/2018 in Second Appeal St. No.141/2014 (*Ram @ Ravi Laxman Salunkhe vs. Nagarbai w/o Vasant Salunkhe and ors*) to substantiate his contentions. It was thus submitted that the impugned order was liable to be set aside.

3. On the other hand Shri S. S. Sitani, learned counsel for the respondents supported the impugned order. According to him the

objectors were merely trying to prolong execution of the decree. The share of the objectors in the suit property had been protected and the executing Court had clarified that their share was not liable to be executed under the decree passed in the suit for specific performance. While the entire property was admeasuring about 2808 sq. ft. the sale-deed directed to be executed was only in respect of 400 sq. ft from the half share of the judgment-debtor. Hence no interference was called for. He relied upon the judgment in *Satyawati vs. Rajinder Singh and anr. 2014(1) Mh.L.J. 624* in support of his submissions.

4. On hearing the learned counsel for the parties I do not find any reason to interfere with the order of the executing Court. The interest of the objectors stand protected with the executing Court observing that the sale-deeds were required to be executed in terms of the decree for specific performance were in respect of two shop blocks admeasuring 400 sq. ft. from half the property of the judgment-debtor. Property No.260 was admeasuring 2808 sq. ft and hence even if the sale-deeds were to be executed of a portion of the said property the share of the objectors would not be affected. It is also found that similar objections to the maintainability of the proceedings had been turned down by this Court in the earlier round of litigation that was decided on 10/04/2019. In these facts therefore the ratio of the decision relied

upon in ***Ramdas*** (supra) does not apply to the case in hand. Since the interests of the objectors stand protected it would not be necessary for the decree-holder to file a suit for partition.

5. In the light of the observations made by the executing Court which protects the interests of the objectors I do not find any case made out to interfere in writ jurisdiction. The writ petitions are dismissed leaving the parties to bear their own costs.

JUDGE