

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

WRIT PETITION NO.7660 OF 2018

Tukaram Arjun Chafekar and ors.

-vs-

Keshav Madhao Mungilwar 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 R. J. Shinde, Advocate for petitioners.

Shri N. S. Bhattad, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : June 11, 2019

The petitioners who are the judgment-debtors in the execution proceedings filed by the respondents herein are aggrieved by the order passed by the Executing Court below Exhibits-21 and 29. The petitioners had filed a suit for perpetual injunction so as to protect their possession in respect of the suit property which was received in a partition. During pendency of the appeal before the District Court, the plaintiffs made certain construction in breach of the order of injunction and an application was moved by the respondents for removing that construction. The appellate Court directed the legal heirs of the plaintiffs to remove that construction. Second Appeal No.190 of 2015 filed by the original plaintiffs came to be dismissed. The order directing removal of that construction was sought to be executed and in those proceedings the decree-holders sought issuance of warrant of possession while the judgment-debtors sought stay to the execution. The Executing Court allowed the application for issuance of warrant of possession and refused to stay the execution proceedings.

2. Heard the learned counsel for the parties. According to the petitioners, one Pramila daughter of Tukaram was in possession of the suit property but she was not brought on record as legal heir of Tukaram in the suit. She had filed R.C.S. No.03/2018 for a declaration that the parties in R.C.S. No.54/2003 had no right in the suit property and therefore till the suit filed by her was adjudicated it was necessary to stay the execution proceedings.

3. The Executing Court has observed that the decree as passed was binding on the judgment-debtors and as the same had attained finality, it was liable to be executed. Pramila was not brought on record by the plaintiffs itself and therefore it was not permissible for them to seek stay to the execution. Her rights if any, would be adjudicated in the suit as filed. For that purpose it was not necessary to stay the execution proceedings. Similarly, no fault can be found with the order issuing the warrant of possession.

4. In that view of the matter I do not find any reason to interfere in writ jurisdiction. The writ petition is therefore dismissed. No costs.

JUDGE