

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 798/2019

Babarao S/o Rangraoji Shende
..VS..
Dasharath S/o Kashinath Ugemuge

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.R. Kidilay, Advocate for the petitioner

CORAM : Z.A.HAQ, J.
DATED : 05/02/2019

Heard.

The petitioner – Judgment Debtor claims to be the son-in-law of the respondent – Decree holder. The claim of the respondent for possession of the suit house came to be decreed by the trial Court in R.C.S. No. 249/2009 by the judgment dated 03/07/2015. The first appeal and the second appeal filed by the Judgment Debtor are dismissed. The respondent has filed the execution proceedings. In July 2018, the petitioner filed R.C.S. No. 194/2018 praying for declaration that the suit property is the ancestral property of the family of the defendant nos. 1 to 3 (defendant no. 1 being the present respondent), and that the petitioner is entitled for 1/8th share in the suit property. Then, the petitioner filed the application (Exh. 30) in the execution proceedings invoking the jurisdiction of the executing Court under Order 21 Rule 29 of the Code of Civil Procedure and prayed that the execution proceedings be stayed till the decision of R.C.S. No. 194/2018. This application (Exh. 30) is dismissed by the executing Court by the impugned order. The petitioner had filed an objection vide (Exh. 26) contending that the decree is

not executable as the boundaries of the suit property are not rightly mentioned. This application is also dismissed by the executing Court. Both the above orders are challenged in this petition.

As far as the order passed by the executing Court on the objection (Exh. 26) is concerned, I am of the view that the objection was taken, perhaps to protract the matter for some time. The objection taken by the Judgment Debtor vide (Exh. 26) cannot be said to be an objection in the eye of law. It does not disclose the provision under which the objection is taken. It does not give any details on the basis of which prima facie, it can be said that the decree passed by the Competent Court and maintained upto this Court is not executable. The executing Court has rightly dismissed the objection by a very precise and succinct order of four lines. It has to be appreciated that the executing Court has not wasted its time on such frivolous objection.

As far as the order passed on the application (Exh. 30) is concerned, again I find that the executing Court has rightly refused to exercise its jurisdiction under Order 21 Rule 29 of the Code of Civil Procedure. The learned advocate for the petitioner – Judgment Debtor relied on the judgment given in the case of Balasaheb S/o Gulabrao Salunke vs. Anil S/o. Raosaheb Deshmukh & Ors. reported in 2017 (3) ALL MR at page 1 and the judgment given in the case of Shri Upendra Raghuraj Deshprabhu vs. Shri Rajaram Shriram Deshprabhu reported in 2002 (3) ALL MR at page 817 to support his arguments that the executing Court should stay the proceedings if the civil suit between the same parties i.e. the Decree holder and the Judgment Debtor is pending in the

same Court. The legal proposition cannot be disputed. The point is whether the provisions of Rule 29 of Order 21 of the Code of Civil Procedure mandates that the executing Court should adopt the hands off policy and stay the execution proceedings only because civil suit between the same parties is pending in the same Court. The learned advocate for the petitioner has not been able to point out that the provisions of Rule 29 of Order 21 of the Code of Civil Procedure are mandatory. Except for the submission that the civil suit is pending between the same parties in the same Court, nothing is pointed out to satisfy that the decree passed by the Competent Court and maintained upto this Court is required to be stayed otherwise the situation would be irreversible. The facts in the case of Balasaheb S/o Gulabrao Salunke (supra) and in the case of Upendra Raghuraj Deshprabhu (supra) were totally different and none of these judgments deal with the point which is required to be considered in the present matter. The petitioner has not been able to make out a case for interference by this Court in the extra-ordinary jurisdiction.

The writ petition is **dismissed**.

On query, the learned advocate for the petitioner submitted that the Court Fee for challenging one order is paid. The petitioner shall pay the additional Court Fee for challenging the second order also. The additional Court Fee shall be paid and affidavit shall be filed on record of this petition within one month.

JUDGE