

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

7 WRIT PETITION NO.6208 OF 2009

SHRIDHAR BHAGA WAGH
VERSUS
BHIKA PUNDLIK WAGH LRS BAJIRAO BHIKA WAGH AND
OTHERS

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Advocate for Petitioner : Mr. A.S.Kulkarni h/f Mr. Nagargoje
Ankush N.

Advocate for Respondent No.1-A : Mr. Malte Uday S.

Advocate for Respondent No.2 : Mr. Surti Zainab M.

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CORAM : V. K. JADHAV, J.

DATE : 24.02.2020

PER COURT :-

1. Heard both the sides.
2. The petitioner is the original defendant No.2. Respondent No.1 / original plaintiff has filed the Regular Darkhast No.32 of 1990 for execution of the decree in Regular Civil Suit No.117/1980 for specific performance of contract. Pending Darkhast, respondent No.1 / original plaintiff died. Thus, his legal heirs have filed an application Exh.63 for substitution as the legal heirs of the original decree holder. By impugned order dated 30.07.2009, the Trial Court has allowed the same.

3. Both the learned counsel accept the legal position that in terms of the Order 22 Rule 12 of the Civil Procedure Code, the provisions of Order 22 Rules 3, 4 and 8 are not applicable to the proceedings in execution of a decree or order. The learned counsel for respondent No.1 / original plaintiff has also placed his reliance in a case of ***Varadarajan Vs. Kanakavalli and others reported in 2020(1) JT 265***, the Supreme Court in paragraph No.8 of the order has made the following observations :

“8. We may state that order XXII of the Code is applicable to the pending proceedings in a suit. But the conflicting claims of legal representatives can be decided in execution proceedings in view of the principles of Rule 5 of Order XXII. This Court in a judgment reported as V. Uthirapathi v. Ashrab & Ors., (1998) 3 SCC 148 held that the normal principle arising in a suit – before the decree is passed – that the legal representatives are to be brought on record within a particular period is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings. This court held as under :-

“11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows:

“Order 22 Rule 12 : Application of order to proceedings.- Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.”

Even in case of ***V. Uthirapathi Vs. Ashrab and others reported in (1998) 3 SCC 148***, the Supreme Court on earlier

occasion has made the similar observations.

4. In view of the above settled position, I do not find any substance in this Writ Petition. There is no fault in the impugned order passed by the Executing Court. Hence, the following order :

ORDER

The Writ petition is hereby dismissed and disposed off accordingly.

(V. K. JADHAV, J.)

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vmk/-