

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 39 OF 2013
WITH
CIVIL APPLICATION NO. 10395 OF 2013
IN WRIT PETITION NO. 39 OF 2013
WITH
CIVIL APPLICATION NO. 10242 OF 2016
IN WRIT PETITION NO. 39 OF 2013

SINDHUBAI W/O DEVIDAS JAWANJAL
VERSUS
NANDUBAI @ SUNANDABAI D/O DIGAMBAR MAHINDRE AND
OTHERS

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Mr. B. R. Waramaa, Advocate for the Petitioner.
Mr. S. P. Sonpawale, Advocate for Respondent No.1.
Mr. V. D. Salunke, Advocate for Respondent No.2.
Mr. R. G. Hange, Advocate for Respondent Nos. 6 and 8 to 14.
Mr. N. D. Kendre, Advocate for Respondent No.7.

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CORAM : V. K. JADHAV, J.
RESERVED ON : 13th FEBRUARY, 2020
PRONOUNCED ON : 27th April, 2020

ORDER :-

1. Heard finally with consent at admission stage.
2. By way of this Writ Petition, the petitioner/original decree holder is seeking quashing and setting aside the order dated 09.11.2012 passed below Exhibit 262 by the Civil Judge, Junior Division, Ausa, District Latur/executing court in Regular Darkhast

No.18 of 1981 and to allow the application Exhibit 262. The petitioner/original decree holder is further seeking to quash and set aside the order dated 04.07.2012 passed below Exhibit 178 in Regular Darkhast No.18 of 1981 and to dismiss the said application and also to direct respondent no.2/court receiver to comply with the order dated 06.08.2011 passed below Exhibit 77 in Regular Darkhast No. 18 of 1981 and to submit the accounts of the suit properties, including the arrears of rent, rent and amount received from cultivation of the agricultural land.

3. Brief facts giving rise to the present Writ Petition are as follows:

a. The petitioner had instituted Regular Civil Suit No.221 of 1975 before Civil Judge, Junior Division, Ausa for partition and separate possession on 10.10.1975. The suit property is comprising of survey no. 92 ad-measuring 15 acre 20 guntha, survey no. 140 ad-measuring 10 acre 17 guntha and house no. 326 situated at village Bhada, Taluka Ausa, District Latur. The suit property was owned and possessed by father of the petitioner, namely, Digambar, who died leaving behind two daughters i.e. the

petitioner Sindhubai and defendant Nandubai (respondent no.1 herein). By judgment and decree dated 25.07.1979, learned Civil Judge, Junior Division, AUSA directed that the petitioner/plaintiff and her minor sister Nandubai, each should get half share in suit house no. 326 situated at village Bhada and which was in possession of the receiver. The receiver was directed to effect partition of the said house in two equal shares fitted to the situation of the house with consequential directions. It was further directed that that the petitioner/plaintiff and her minor sister Nandubai both shall get half share in the suit lands and partition shall be effected through Collector under Section 54 of C.P.C. Thereafter, the petitioner/plaintiff may get her half share in the lands in her possession. So far as the share of minor Nandubai is concerned, it was ordered that on her behalf the receiver would hold the land till she attains majority. The receiver was further directed to make all the arrangement for cultivation of the lands of the defendant Nandubai as long as he is the receiver. The receiver was also directed to take care of the house property of minor Nandubai. The receiver was further directed to go on depositing the income of the house and the lands in the court. This decree has attained finality.

b. The petitioner/decreed holder has filed Regular Darkhast No. 18 of 1981 for execution of the decree passed in RCS No. 221 of 1975. She had also filed an application below Exhibit 6 for effecting partition and delivery of suit house thereof. Learned Judge of the executing court had issued notice to the receiver on 14.09.1981 and directed him to effect partition till 25.09.1981. Respondent no.2/court receiver had sought time to file say by filing applications below Exhibits 10 to 20 and thereafter, filed his say below Exhibit 21 disclosing the fact that the suit house was given on rent and the arrears of rent were yet to be received. He had also disclosed that in spite of intimation to vacate the house, the tenant had not vacated the suit premises. Ultimately, respondent no.2/court receiver sought time to effect partition of the suit house. Learned Judge of the executing court had accordingly passed order on the application on 19.07.1982 and directed to effect partition. Respondent no.2/court receiver had submitted a proposed partition with map along with an application dated 19.08.1982 and by order dated 24.11.1982, the executing court accepted the said proposed partition. Even respondent no.2 court receiver had applied to the executing court seeking police aid for recovery of arrears of rent

and possession of the suit house from the tenant. The executing court had granted police protection as prayed. According to the petitioner, the executing court passed the order below Exhibit 54 and issued possession warrant. However, the said warrant could not be served till 10.08.2009. The petitioner had filed application on 16.09.2009 and requested to issue warrant for handing over possession of the suit house as per the report of the court commissioner. It was prayed that the agricultural land be allotted on yearly basis for cultivation and to submit accounts after deducting the charges of the court receiver. However, respondent no. 2/court receiver had filed a say disclosing the fact that the suit properties are already in possession of the parties. Respondent no.2/receiver had stated that he was under the *bonafide* belief that partition is effected and the execution petition has been disposed off. However, respondent no.2 had requested the court that he is ready to effect partition and give possession thereof. The executing court passed order below Exhibit 77 to that effect that on 06.08.2011 and directed to submit the accounts.

c. Meanwhile, respondent no.2/court receiver had submitted an application below Exhibit 85 informing thereby to the executing

court that the suit properties are in possession of unauthorized occupants and time was sought to collect information. On 22.02.2010 respondent no.2/court receiver had submitted a report and informed to the court that the documents of alienation of the suit house are not received. Respondent no.2/court receiver had sought time to obtain copies of the sale deed of the suit property. The petitioner had submitted an application before the executing court seeking direction to the Collector to accept measurement fees and to submit report thereof. By order dated 21.08.2010, the executing court allowed the said application. Respondent no.1/original defendant had also submitted a similar application Exhibit 93 and requested to accept the measurement fees. The said application was also allowed by order dated 21.08.2010. Thereafter, respondent no.2/court receiver had sought time for initiation of action against the unauthorized occupants over the suit properties. On 21.10.2010, respondent no.2/court receiver had submitted a report mentioning therein the details of all the occupants. Furthermore, in spite of the above said scenario, respondent no.2/court receiver had applied to the executing court requesting thereby to discharge him from the obligation. The petitioner had submitted a detail say to the application below

Exhibit 105 on 21.01.2011 and resisted the request of the court receiver. The executing court has rejected the application below Exhibit 105 by order dated 06.08.2011. It was directed that the accounts be furnished and the arrears of amount be deposited. Respondent no.2 receiver had filed a review application on 18.10.2011 and requested to recall the order passed below Exhibit 105. The petitioner had also filed say to the said review application. However, respondent no.2 had not pressed the review application.

d. Thereafter, respondent no.2/court receiver had submitted an application on 30.11.2011 Exhibit 142 and requested to issue notice to the purchasers of the suit properties. Accordingly, the executing court issued notice to the purchasers by order dated 09.12.2011. In response to the said order on application Exhibit 142, the purchasers caused their appearance before the executing court and filed say below Exhibits 163 to 165. According to the petitioner, respondent no.2/court receiver succeeded in his ill intention when the purchasers of the suit properties had filed objection to the execution petition and requested for staying the auction process. By order dated 04.07.2012 below Exhibits 174 and

176, the executing court stayed the auction process on deposit of Rs.10,000/-. Even the executing court has also passed order below Exhibit 178, which is impugned in this Writ Petition, and directed the purchasers to lead evidence. Pursuant to the order passed below Exhibit 178, the executing court has framed issues on 26.07.2012. The objection petitioners have lead evidence vide Exhibits 220, 223, 226, 232, 233, 235, 248, 249, 255 and also submitted various documents.

e. At this juncture, it is necessary to note that respondent no.1/ original defendant had filed Regular Darkhast No. 37 of 1983 along with Misc. Application No. 15 of 1983. It was her contention that she has attained majority and therefore, she may be permitted to file execution petition. In the said execution petition only the court receiver was impleaded as party and pendency of execution petition bearing Regular Darkhast No. 18 of 1981 was suppressed. Regular Darkhast No. 37 of 1983 was independently placed before the court and in absence of the decree holder, certain orders were procured. According to the petitioner, it was a plan to grab the suit properties. The petitioner thereafter filed the application Exhibit 262 and requested the executing court to decide the legality of

filing of the another darkhast bearing Regular Darkhast No. 37 of 1983 and to take decision on the objections after receipt of report of the Collector. Respondent no.2/court receiver also submitted his say. After hearing the parties, by the impugned order dated 09.11.2012, the executing court has rejected the application. By filing this Writ Petition, the petitioner is thus challenging the order passed below Exhibit 262 so also the order passed below Exhibit 178 entertaining the objections thereby and also seeking direction to respondent no.2/court receiver to comply with the order dated 06.08.2011 passed below Exhibit 77 filed in Regular Darkhast No. 18 of 1981.

4. Learned counsel for the petitioner submits that the decree of partition was sent to the Collector in June, 1981 and once the decree is sent for effecting partition under Section 54 of C.P.C., then the executing court becomes *functus officio*. Learned counsel submits that till this date report from the Collector is not received by the executing court. Learned counsel submits that respondent no.2/court receiver has not deposited arrears of rent or the amount received from cultivation of the suit lands. It is the case of the court receiver that the suit house was given on rent to one Nagnath Mali on yearly basis for Rs.550/-and the suit house was not vacated. All

the while it was contended that the court receiver was ready to effect partition but actual partition in respect of the suit house was never effected. Respondent no.2/court receiver has willfully avoided for submission of accounts. Learned counsel submits that respondent no.2/court receiver has intended to grab the entire suit properties. Learned counsel submits that Regular Darkhast No. 37 of 1983 came to be filed by suppressing pendency of the main execution petition. Learned counsel submits that even assuming that respondent/defendant Nandubai had filed separate execution petition, however, the petitioner was not impleaded as a party in the said execution petition. Learned counsel submits that record has been created in Regular Darkhast No. 37 of 1983 that half share is given to Nandubai. It is for the court receiver to explain as to what happened to the remaining half share of the property. Learned counsel submits that the executing court ought to have considered the application below Exhibit 262 for deciding the legality of Regular Darkhast No. 37 of 1983.

5. Furthermore, learned counsel for the petitioner submits that, the order passed by the executing court directing the objection petitioners/purchasers to lead evidence is illegal and contrary to law. The subsequent purchasers have no right to raise grievance in

respect of the suit properties put in possession of the court receiver. Therefore, the order dated 04.07.2012 passed below Exhibit 178 is illegal and needs to be set aside. Equally, the evidence recorded by the executing court needs to be discarded.

6. Learned counsel for the petitioner further submits that non-compliance of the order dated 06.08.2011 would amount to misconduct on the part of the court receiver for which necessary action is required to be initiated. Respondent no.2/court receiver had given the house property on rent without permission of the executing court and possession is yet not recovered from the tenant. Though the court receiver was impleaded as party in execution petition i.e. Regular Darkhast No. 37 of 1983, he failed to point out pendency of Regular Darkhast No. 18 of 1981. Furthermore, it is equally surprising that possession of the agricultural lands shown to have been delivered to respondent no.1 Nandubai in her Regular Darkhast No. 37 of 1983 from the court receiver though the precept was sent to the Collector in Regular Darkhast No. 18 of 1981. It is thus clear that sham and bogus record has been created. No steps were taken to hand over possession to the extent of the share of the petitioner. The said Regular Darkhast No. 18 of 1981 is still pending. Learned counsel

submits that neither the share in the house nor the share in the suit lands was given to the petitioner at any point of time. Learned counsel submits that respondent nos. 3 to 14 herein claim possession of the suit lands as purchasers and objected the decree of possession. Learned Judge of the executing court has permitted them to lead evidence. The said objections are untenable. So far as the petitioner's share is concerned, Regular Darkhast No. 18 of 1981 is pending and the measurement maps of the proposed shares are prepared by the Revenue officer as per the order passed by this Court. Hence, execution needs to proceed as per Section 54 of C.P.C.

7. Learned counsel for the petitioner, in order to substantiate his contention, placed reliance on the case of ***Krishna Kumar Khemka v. Grindlays Bank Limited***, reported in (1990) 3 SCC 669.

8. Learned counsel for respondent no.1/original defendant in RCS No. 221 of 1975 submits that respondent no.1 had also instituted RCS No.76 of 1979 against the present petitioner for partition and separate possession in respect of the same suit property. Learned Civil Judge, Junior Division, Ausa, by order

dated 15.06.1979, considering that the parties are same and partition is sought by two sisters in respect of the same property, directed to amalgamate RCS No. 76 of 1979 in RCS No. 221 of 1975. Accordingly, the court has directed to merge RCS No.76 of 1979 in RCS No. 221 of 1975 and it is treated as a counter claim. Learned counsel submits that respondent no.1 Nandubai was minor at the time of institution of RCS No. 76 of 1979 and she had instituted the said suit under guardianship of her real aunt. Respondent no.1 Nandubai after attaining the age of majority filed RD No. 37 of 1983 for execution of the decree to the extent of her half share as determined by the court in the landed property so also partition and possession of house no. 326. Respondent no.1 had prayed for issuance of warrant under order XXI Rule 35 of C.P.C. against the court receiver to deliver possession of the land. Learned counsel submits that the panchanama dated 21.01.1984 drawn pursuant to execution petition R.D. no. 37 of 1983 and possession of the suit property to the extent of the share of respondent no.1 Nandubai was given to her from the possession of the court receiver. Respondent no.1 was given possession of the suit property to the extent of the landed property from the possession of the court receiver through court bailiff.

9. Learned counsel for respondent no.2/court receiver submits that the petitioner has made a blatant and false statement before this Court that the petitioner has not transferred any part of the suit property to the persons who have filed objections. Learned counsel submits that the petitioner has suppressed the material fact and did not come before this Court with clean hands. Petitioner Sindhubai herself had filed R.D. No. 18 of 1981 and respondent nos. 3 to 14 herein have filed objection petitions and therefore, as per section 47 of C.P.C., no separate suit is required to be filed by the objection petitioners. The executing court would determine and decide the objections. Those objection petitioners have examined ten witnesses and when the petitioner felt that the evidence goes against her, she approached this Court by filing the present Writ Petition. Learned counsel submits that it is important to note that the application below Exhibit 262 is jointly filed by the Decree Holder and the Judgment Debtor which is rightly rejected by the trial court. However, this Writ Petition has been filed only by the Decree Holder. Furthermore, there are no signatures of the parties on the application Exhibit 262. It is a substantive application raising a different plea, however there is no verification and the application is signed by the Advocates only. It speaks in volume.

Learned counsel submits that the petitioner is avoiding to lead evidence as per the order dated 04.07.2012 passed below Exhibit 178.

10. Learned counsel for respondent no.2 submits that respondent no.2/court receiver is not denying his liability as a court receiver and there are some lapses inadvertently on his part because of the different orders passed by the executing court time to time. Learned counsel submits that allegations have been made against respondent no.2, who is Advocate by occupation, due to occupational rivalry. Learned counsel submits that after appointment of respondent no.2 as court receiver, the suit house was given on rent to one Nagnath Mali in the year 1981 so also the land given on '*ek sala lawani*' which was deposited in the court in R.C.S. No. 221 of 1975 and even respondent no.2 received Rs.200/- as his remuneration from the court. Learned counsel submits that in R.D. No. 18 of 1981, respondent no.2 filed a map of partition of the suit house below Exhibit 22 Exhibit 'F'. The executing court directed to effect partition. Accordingly partition was effected as per the said map and the share of Decree Holder was handed over to her and the share of Judgment Debtor remained with respondent no.2. It is part of record that during

pendency of above R.D. No. 18 of 1981, the Judgment Debtor attained majority in the year 1983 and she had filed Misc. Application No. 15 of 1983 stating therein that she became major and she may be permitted to file execution petition. The executing court allowed the said Misc. Application and accordingly she filed another R.D. No. 37 of 1983. Both the execution petitions i.e. R.D. No. 18 of 1981 and R.D. No. 37 of 1983 were pending before the same Judge and the Judgment Debtor was party in the said execution proceedings. In terms of the order passed in Misc. Application No. 15 of 1983, respondent no.1 Judgment Debtor had filed separate R.D. No. 37 of 1983. It was filed only against respondent no.2 without making the Decree Holder Sindhubai as a party. However, no notice was issued to respondent no.2 and the executing court straightaway issued warrant of possession on 05.12.1983 and the court bailiff has executed the warrant and put respondent no.1 Nandubai in possession of the landed property. Respondent no.1 was also put in possession of half portion of the house property. Learned counsel submits that though the proceedings in R.D. No. 37 of 1983 are completed, R.D. No. 18 of 1981 is pending. In the said R.D. No. 18 of 1981, the petitioner Sindhubai had filed application Exhibit 77 for direction to

respondent no.2 to submit accounts in the court. Learned counsel submits that respondent no.2 had filed say and also remained under *bonafide* belief that the decree has already been executed under the order of the court. Learned counsel submits that the petitioner Decree Holder and respondent no.1 Judgment Debtor have already executed various sale deeds of the lands since 1981 and the purchasers are in possession of the properties and thereafter, symbolic possession of respondent no.2 /court receiver was meaningless. Learned counsel submits that respondent no.2 has brought this to the notice of the court by filing application Exhibit 142 and accordingly, the executing court has issued notice to the purchasers. Learned counsel submits that in view of the detailed undisputed facts and circumstances of the case and since decree had already been executed by the court in the year 1983 itself, the liability of respondent no.2 as a court receiver had come to an end in the year 1983 itself on both counts. Learned counsel submits that respondent no.2 has given all the details of income of the landed property from the year 1979 to 1983 so also the house property in his affidavit-in-reply dated 21.06.2013. Learned counsel for respondent no.2 submits that the Writ Petition is liable to be dismissed.

11. Learned counsel appearing for respondent nos. 6 and 8 to 14 / the objection petitioners (purchasers) submits that these respondents are the *bonafide* purchasers for a value. Respondent nos. 12 to 14 filed objection petition Exhibit 178. They have purchased the properties from the Decree Holder so also the Judgment Debtor. The executing court has framed issues and even the respondents/purchasers have lead evidence in support of their contention and even they were subjected to cross-examination at length by the petitioner. The Writ Petition is premature and the executing court is yet to decide the objection petitions filed by the purchasers who are now standing in the shoes of the Decree Holder. The respondents/purchasers are in possession of the suit properties as per the sale deeds since long. Learned counsel for the respondents/purchasers placed on record a chart indicating 13 transactions in respect of the suit properties. The petitioner so also respondent no.1 Nandubai sold the portion of the landed suit properties on various occasions under registered sale deeds to the respondents/purchasers for a valuable consideration. Those are the transactions from the year 1984 and even before that.

12. Learned counsel for respondent no.7 has adopted the submissions made on behalf of respondent nos. 6 and 8 to 14/objection petitioners and in order to substantiate his contention, placed reliance on the case of ***N.S.S. Narayana Sarma and others v. Goldstone Exports (P) Ltd. and others*** reported in (2002) 1 SCC 662.

13. In the case of ***N.S.S. Narayana Sarma and others*** (supra) relied upon by learned counsel for respondent no.7, in para nos. 15 and 19, the Supreme Court has made the following observations:

“15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree holder entitled to possession of the property encounters obstruction from “any person”. From the provisions in these rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court

to deal with “all issues” relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. On a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Courts seized of an execution proceeding. The Court cannot shirk its responsibility by skirting the relevant issues arising in the case.

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19. *From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree. From the averments made in the petition filed by the appellants before the executing Court it is clear that they are claiming independent right to the property from which they are sought to be evicted in execution of the decree. It is the further case of the appellants that the right in the property had vested in them much prior to filing of the present suit the decree of which is under execution. It is to be kept in mind that the suit as initially filed was a suit for partition simpliciter. In such a suit the High Court in course of execution proceedings ordered delivery of possession. Whether such a direction given in the suit is valid or not is a separate matter. We need not say anything more on the question at present. As noted earlier, the learned single Judge and the Division Bench dismissed the petition filed by the appellants as non-maintainable without entering into the merits of the case. The Division Bench appears to have taken the view that since the appellants are claiming the property through the Pygah Committee or the State Government, who are parties in the suit, they are bound by the decree. The view taken by the Division Bench is unsustainable and does not at all stand scrutiny under law. It*

amounts to, if we may put it that way, begging the question raised in the petition filed by the appellants. At the cost of repetition, it may be stated here that the appellants are claiming independent title to the property as the transferees from the pattadars whose land did not vest in the State Government under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Jagirdar Regulation Act, 1958. On a perusal of the orders passed by the single Judge as well as Division Bench of the High Court, we are constrained to observe that the said orders are based on a complete mis-reading of the case of the appellants and mis-conception of the legal position relevant to the matter. Considering the facts and circumstances of the case, we are of the view that the matter should be remitted to the High Court for fresh consideration of the petitions filed by the appellants by a single Judge at the first instance.”

14. In the instant case, the facts are peculiar as emerging from the documents submitted along with the Writ Petition and the various orders passed by the executing court. It *prima facie* appears that the petitioner/original Decree Holder Sindhubai and Judgment Debtor No.1 Nandubai have sold the suit properties under registered sale deeds time to time for valuable consideration. However, by filing application Exhibit 262 before the executing court, they have raised objection about validity of R.D. No. 37 of 1983. It is pertinent that the said application Exhibit 262 is signed by the Advocates and not by the parties, leave apart the verification

part. It is also prayed in the said application that recording of evidence in terms of the order passed below Exhibit 178 may be deferred till application Exhibit 262 is decided. The application Exhibit 262 came to be filed on 12.09.2012.

15. I have carefully gone through the application Exhibit 178 filed by some of the respondents/objection petitioners before the executing court on 07.04.2012. It was contended in the said application Exhibit 178 that the petitioner Sindhubai and the Judgment Debtor Nandubai have partitioned the suit property among them out of the court and even they have sold some of the suit properties 20 years back under registered sale deed for valuable consideration. It was also brought to the notice of the court that they have not brought this to the notice of the executing court at any point of time. The said objection petition Exhibit 178 came to be filed under Section 47 of C.P.C. Learned Judge of the executing court, by impugned order dated 04.07.2012, considering the peculiar facts emerging from the said application Exhibit 178 with various documents of transactions annexed to it, directed the petitioner/Decree Holder, the Judgment Debtor and the objection petitioners to lead oral and documentary evidence.

16. It further appears from the order passed below Exhibit 178 and further order dated 26.07.2012 passed by the executing court that the executing court has decided to try the objection as a suit and accordingly framed the following issues as per Exhibit 217:

1. Do Objection petitioners prove that there was a partition in between DH and JD after filing of present RD and RD is accordingly satisfied?
2. Do the Objection petitioner prove that DH has given land situated in S.N.135 New No.140/A to her son Kishor Devidas Jawanjale and he has then alienated said land to Salim Abdul Rehman Shaikh, who sold it to Nandkumar Shivalkar?
3. Do the Objection petitioner prove that JD has sold land situated in S.N. 140/A to Vilas Mahindre and he has then alienated said land to Babruwan Shivalkar?
4. Do the Objection petitioner prove that JD has sold House No.517 to Vilas Mahindre and he has then alienated said land to Babruwan Shivalkar?
5. Do the Objection petitioner prove that JD has sold land situated in S.N.92 to Narayan Shivalkar and he has then alienated said land to Bhanudas Jawanjale?

6. Do the objection petitioner prove that DH has sold land situated in S.N.92 to Mazaroddin Khamoroddin and he has then alienated said land to Sunil Bhandare?
7. Do the Objection petitioner prove that they are bonafide purchaser for value?
8. What order?

17. It further appears that those objection petitioners have almost examined 10 witnesses and they were also subjected to cross-examination by the petitioner Decree Holder and also Judgment Debtor/respondent Nandubai. It also appears that copies of the registered sale deeds are placed before the court during the course of the said evidence and those are found to be exhibited. Even the bailiff and the panch witnesses on the panchanama drawn pursuant to R.D. No. 37 of 1983 filed by respondent no.2 Nandubai came to be examined as witnesses.

18. It thus *prima facie* appears that application Exhibit 262 came to be filed with some ulterior motive. Even though the order passed below Exhibit 178 dated 04.07.2012 was not challenged but the application Exhibit 262 came to be filed praying therein that the

validity of execution petition R.D. No. 37 of 1983 is to be decided before recording of evidence of the objection petitioners and after receipt of the measurement report from the Collector. It is pertinent to note that the said application Exhibit 262 came to be filed jointly by the counsel appearing for the petitioner and respondent no.1 Nandubai. It is the case of respondent Nandubai that after attaining the age of majority and after obtaining due permission from the court, she had filed execution petition no. 37 of 1983 and even then by filing application Exhibit 262, prayer is made to decide the validity of execution petition no. 37 of 1983. Learned Judge of the executing court, in para no. 9 of the impugned order passed below exhibit 262, has also given reference to issue no.1 vide Exhibit 217 and observed that this issue, in itself, comprises of the aspect of validity of R.D. No. 37 of 1983. Learned Judge of the executing court in unequivocal words held that, “unless and until validity and veracity of this Darkhast (R.D. No. 37 of 1983) is checked on the touchstone of law, issue on satisfaction of present decree, as alleged by the objection petitioners, cannot be adjudicated”. *Prima facie* it appears that the petitioner so also respondent Nandubai are avoiding to face the objection petitions for the reason best known to them. *Prima facie* it also appears that

they have sold portion of the suit properties to various persons and now pressing R.D. No. 18 of 1981 under the pretext that the suit property is yet to be partitioned. The Supreme Court in the case of **N.S.S. Narayana Sarma and others** (supra) relied upon by learned counsel for respondent no.7, by referring various decisions, held that when any person claiming title to the property in his possession obstructs the attempt of the Decree Holder to dispossess him from the said property, the executing court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which is to be treated as a decree. So far as the allegations as against respondent no.2/receiver are concerned, the executing court has not made any specific observation in this regard at any point of time and it is for the petitioner to file a separate application before the executing court, if so desired.

19. During pendency of this Writ Petition, by order dated 04.05.2016, on the basis of the information received from the parties, it is recorded that the District Superintendent of Land Records (DSLRL), AUSA, District Latur has issued notice dated 22.03.2016 and that the DSLRL would be proceeding to carry out

measurement of the suit property with regard to the demarcation of the shares in the execution proceeding. It has been directed by this Court in the order dated 04.05.2016 that adjournment of this matter shall not be an impediment for the DSLR to proceed with the notice dated 22.03.2016. Further, by order dated 07.08.2018, on perusal of the communication dated 17.06.2017 addressed by the Deputy Director of Land Records, Ausa to the District Superintendent of Land Records, Latur, a note was taken that measurement report was ready. Accordingly, by order dated 07.08.2018, this Court has directed the Deputy Director of Land Records, Ausa to produce the said report in a sealed envelop in this Court on the next date. The said report is now placed before this Court in a sealed envelop. It would be appropriate if the said sealed envelop is sent to the executing court for deciding the objection petitions filed by the objection petitioners.

20. In view of the discussion above, I find no fault in the orders passed by the executing court below Exhibit 262 and Exhibit 178. In terms of the provisions of Order XXI Rule 103 of C.P.C., the order passed by the executing court is required to be treated as a decree. The petitioner is always at liberty to challenge the said

decree by filing appeal, if occasion so arises. Thus, considering the peculiar facts of this case, I do not intend to interfere with the orders passed by the executing court. Hence, the following order:

ORDER

- I. Writ Petition No. 39 of 2013 is hereby dismissed.
 - II. In view of dismissal of the Writ Petition, nothing survives for consideration in pending Civil Application Nos. 10395 of 2013 and 10242 of 2016 and the same also stand disposed off.
 - III. The sealed envelop received from the Deputy Director of Land Records, Ausa, shall be sent to the executing court and the same would be part of the execution petition. It is for the executing court to open the said envelop and the executing court may consider the same while disposing off the objection petitions.
21. Needless to say that the executing court shall decide the objection petitions on its own merits in accordance with law, uninfluenced by the observations made by this Court while disposing off the present Writ Petition.

(V. K. JADHAV, J.)