

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11947 OF 2016

- 1) Sudam Nana Awari,
Age – 58 Years, Occu.- Agriculture,
- 2) Dnyaneshwar Nana Awari,
Age- 52 Years, Occu.- Agriculture,
Both are residents of
Digambar, Taluka Akole,
District Ahmednagar.

Versus

- 1) Madhav Baburao Titame,
Age – 32 years, Occ.- Agriculture,
R/o – Dhokari, Taluka Akole,
District Ahmednagar.
- 2) Collector, Ahmednagar,
Taluka and District Ahmednagar.
- 3) Special Land Acquisition Officer No.13,
Taluka and District Ahmednagar.

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Ms. Suvarna Zaware, Advocate for the Petitioners.

Mr. A. N. Nagargoje, Advocate for Respondent No.1.

Mr. K. B. Jadhavar, AGP for Respondent Nos. 2 and 3.

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CORAM : V. K. JADHAV, J.
RESERVED ON : 25.11.2019
PRONOUNCED ON : 02.01.2020

ORDER :-

1. Heard finally with consent at admission stage.

2. Being aggrieved by the order dated 04.10.2016 passed by Civil Judge, Senior Division, Sangamner below Exhibit 47 in Regular Darkhast No. 358 of 2012 (old No.50 of 2001), the petitioners-original decree holders have preferred this Writ Petition.

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

a. On the basis of the decree passed in L.R.A. 175 of 1991 dated 10.01.2001, the petitioners had filed Regular Darkhast No. 358 of 2012 (old R.D. No. 50 of 2001) on 25.10.2001. In the pending Darkhast, respondent no.1 herein had filed application below Exhibit 42 for adding him as objector. By order dated 03.03.2014 passed below Exhibit 42, his application came to be allowed. Thereafter, respondent no.1 original objector had filed application Exhibit 47 contending therein that in terms of the decree passed in Regular Civil Suit Nos. 28 of 1989 and 57 of 1989, which has attained finality, the petitioners/decreed holders are entitled for compensation to the extent of the suit house and the well which they have already withdrawn and in terms of the decree passed in the aforesaid suits, they are not entitled for the compensation for acquisition of the suit lands. Learned Joint Civil Judge, Senior

Division by order dated 04.10.2016 below Exhibit 47 in Regular Darkhast No. 358 of 2012, allowed the application filed by respondent no.1 original objector with costs and further held that in terms of the judgment and decree passed in Regular Civil Suit Nos. 28 of 1989 and 57 of 1989, defendant nos. 1 to 9 shown in the said suits are entitled to receive the enhanced compensation except for the compensation for the house and the well under the award. Learned Judge of the executing court has recorded the findings to the effect that respondent no.1/original objector is entitled to receive enhanced compensation amount awarded on the basis of the award in L.R.A. No. 175 of 1991 except for the compensation awarded for the house and the well situated in the acquired land which has already been withdrawn by the petitioners/decreed holders. Being aggrieved by the same, the petitioners/decreed holders have preferred this Writ Petition.

4. Learned counsel for the petitioners submits that the suit lands bearing survey nos. 34, 34-a, 34-b and 127 situated at village Digambar, Taluka Akole were originally belonging to one Madhavrao Potnis. Madhavrao Potnis died in the year 1955 and after his demise, Krushnarao Madhavrao Potnis started looking

after and managing the joint family property i.e. the suit lands and other properties that belonged to the joint family as manager or *karta* of the joint family. The suit lands are the pasture lands and are used for grazing cattle. Sometime in the year 1964, said Krushnarao Madhavrao Potnis and other legal heirs of Madhavrao Potnis agreed to sale the suit lands to the father of respondent no.1 Baburao Titame for a consideration of Rs.5,000/- and on 23.11.1964, executed an agreement to sale for and on behalf of himself and other legal heirs of Madhavrao Potnis, in his capacity as manager of the joint Hindu family, for Rs.5,000/- and accepted an earnest amount of Rs.1,000/- from Baburao Titame with assurance that the said transaction would be completed by executing a sale deed up to 01.02.1965. The remaining consideration of Rs.4,000/- was to be paid at the time of sale deed. It was agreed that Baburao Titame should retain possession of the suit lands. On 19.12.1964, the other legal heirs sent a notice through their counsel and informed Baburao Titame that Krushnarao Madhavrao Potnis had no authority to act as *karta* of the joint Hindu family and any agreement executed by him was not binding on them. Baburao Titame replied the notice and also called upon all of them, including Krushnarao Madhavrao Potnis to accept

Rs.4,000/- and to execute the sale deed. On their failure to comply with the notice, Baburao Titame had instituted a suit bearing Regular Civil Suit No. 9 of 1965 for a decree of specific performance of contract and also prayed that he be allowed to be continued to be in possession of the land and also for the relief of decree of injunction. Alternatively, Baburao Titame also pleaded that in case he is found not in possession of the suit lands, he be put in possession of the same. Learned counsel submits that learned Civil Judge, Junior Division, Sangamner, by judgment and decree dated 28.04.1967, dismissed the said suit. Being aggrieved by the same, Baburao Titame (father of respondent no.1 herein) had preferred Regular Civil Appeal No. 173 of 1967 and learned Extra Assistant Judge, Ahmednagar, by judgment and order dated 22.10.1969, partly allowed the said appeal by directing the defendants in the suit to pay sum of Rs.1,000/- (earnest amount) with interest and confirmed the rest of the judgment and decree dismissing the suit seeking relief of specific performance of contract.

5. Learned counsel for the petitioners submits that meanwhile, the suit lands came to be acquired for the construction of Upper

Pravara Project (Nilwande) and award came to be passed for the same in favour of the petitioners. The petitioners had also filed L.R.A. No. 175 of 1991 for enhancement of compensation and by judgment and order dated 10.01.2001, the reference came to be partly allowed and accordingly, respondent State was directed to pay additional compensation to the petitioners to some extent. The petitioners have therefore filed Regular Darkhast No. 358 of 2012 for execution of the award passed in L.R.A. No. 175 of 1991. Learned counsel for the petitioners submits that the objection filed by respondent no.1 in the Regular Darkhast is not maintainable. Respondent no.1 was not a party to L.R.A. No. 175 of 1991 and he never challenged the award passed by the Collector.

6. Learned counsel submits that the judgment and decree passed in Regular Civil Suit No. 9 of 1965, confirmed in Regular Civil Appeal No. 173 of 1967, has attained finality. Learned counsel submits that the brother of the petitioners, namely, Ramhari Nana Awari and one Namdeo Genu Awari had purchased the suit land survey no. 34 ad-measuring 4 Hectar 31 Are under registered sale deed dated 27.11.1972 from the original owner Krushnarao Potnis and the said sale deed confirms the title of the brother of the

petitioners. Furthermore, on the basis of the agreement of sale dated 23.11.1964, the respondent mutated his name in the 7/12 extract on 01.07.1969 and mutation entry no. 577 for survey no. 34 and mutation entry no. 558 for survey nos. 34-a, 34-b and 127 came to be sanctioned. Both these mutation entries came to be challenged by filing Writ petition No. 3157 of 2012 which is pending before this Court.

7. Learned counsel submits that the suit lands came to be acquired in the year 1988 for the purpose of Nilwande project and till acquisition of the land, the petitioners and their brother were in possession of the suit land. They are the tenants of Krishnarao Potnis and therefore, the award came to be passed in their favour. After the award passed by the Collector, the petitioners and their brother have filed L.R.A. No. 175 of 1991 for enhancement of compensation. Respondent no.1 herein has neither challenged the said award passed by the Collector nor filed any objection in L.R.A. No. 175 of 1991. Learned counsel submits that the father of respondent no.1 had fraudulently executed the agreement of sale in favour of the petitioners in respect of the suit land survey nos. 34, 34-a, 34-b and 127 on 06.02.1981 when he was not the

absolute owner of the property. By playing fraud, respondent no.1 has obtained the decree in Regular Civil Suit Nos. 28 of 1989 and 57 of 1989. However, learned Judge of the executing court has failed to consider all these material aspects of the case and only on the basis of the decree passed in Regular Civil Suit Nos. 28 of 1989 and 57 of 1989, passed the impugned order in favour of respondent no.1

8. Learned counsel submits that the petitioners have instituted Regular Civil Suit No. 23 of 2012 before Civil Judge, Senior Division Sangamner challenging therein the sale deed dated 19.06.1972 and also for a decree of perpetual injunction, wherein, all the purchasers have been impleaded as party defendants. The said suit is pending and respondent no.1 had filed an application for rejection of the plaint under Order VII Rule 11 of C.P.C.. The said application came to be rejected by the trial court on 03.07.2014. The said order is challenged by filing Civil Revision Application No. 179 of 2017 which is pending before this Court. Learned counsel submits that even the said sale deed dated 19.06.1972 was never produced before the executing court and a copy of the same has been produced before this Court for the first

time. Learned counsel submits that the said sale deed is the real controversy of all these proceedings. Though respondent no.1-original objector is claiming compensation for the acquired land on the basis of the said sale deed, he has never produced the same before the executing court. Learned counsel submits that the Writ Petition thus deserves to be allowed by setting aside the impugned order passed by the executing court below Exhibit 47 in Regular Darkhast No. 358 of 2012.

9. Learned counsel for the petitioners, in order to substantiate his contention, placed reliance on the following two cases.

1. *North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (Dead) by LRS.*, reported in (2008) 8 SCC 511.
2. *S. P. Chengalvaraya Naidu (Dead) By LRs. v. Jagannath (Dead) By LRs. and others*, reported in (1994) 1 SCC 1.

10. Learned counsel for respondent no.1 submits that the present petition is not maintainable as the petitioners have an alternate remedy to file an appeal against the order impugned in the Writ Petition. The petitioners have also accepted the order dated 03.03.2014 passed below Exhibit 42 by the executing court and

thus, they are now precluded from challenging the subsequent order passed below Exhibit 47. Learned counsel submits that in view of the judgment and decree passed by the Civil Court in Regular Civil Suit Nos. 28 of 1989 and 57 of 1989 confirmed by the appellate court in Regular Civil Appeal Nos. 236 of 2000 and 237 of 2000, the civil rights between the parties, including the compensation issue, have been decided and therefore, nothing remain to be decided. The Civil Court in the aforesaid suits held that the petitioners are entitled for compensation only in respect of the well and the house. The present petitioners and their brother have no concern with the suit land. Learned counsel submits that the suit lands bearing survey nos. 34, 34-a, 34-b and 127 situated at village Digambar, Taluka Akole, District Ahmednagar originally belonged to Krushnarao Madhavrao Potnis and his family members. On 23.11.1964, said Krushnarao Madhavrao Potnis, for himself and on behalf of his family members, executed an agreement to sale in favour of Baburao Titame (father of respondent no.1) in respect of the suit property. In spite of delivery of possession in pursuance of the said agreement to sale, the sale deed was not executed. Consequently, Baburao Titame had instituted Regular Civil Suit No. 9 of 1965 for specific performance

of contract. The joint Civil Judge, Senior Division, Sangamner, by judgment and decree dated 28.04.1967, dismissed Civil Suit No. 9 of 1965. Even Regular Civil Appeal No. 173 of 1967 preferred by Baburao Laxman Titame came to be partly allowed to the extent of refund of the earnest amount and the rest of the judgment and decree stood confirmed. Learned counsel submits that meanwhile, on the basis of the possession and the agreement to sale, name of the Baburao Laxman Titame was recorded in the Revenue record in respect of the suit lands. Learned counsel submits that after dismissal of Regular Civil Appeal No. 173 of 1967, Krushnarao Madhavrao Potnis had executed the sale deed dated 19.06.1972 in respect of the suit property in favour of Baburao Laxman Titame and others and also acknowledged and continued the possession of Baburao Laxman Titame over the suit lands in terms of the agreement to sale dated 23.11.1964. Learned counsel submits that there was a dispute on account of the said lands *interse* between the members of the family of Baburao Laxman Titame and in consequence thereof, Baburao Laxman Titame and his father Laxman Titame were murdered on 14.07.1975. After demise of Baburao Titame and Laxman Titame, names of all the legal heirs of Baburao and Laxman came to be recorded in the Revenue record in

respect of the suit lands vide mutation entry no. 639 dated 20.11.1977. Learned counsel submits that on 06.02.1981, the legal heirs of Baburao Titame and Laxman Titame had executed an agreement to sale and thereof agreed to sale suit lands to the petitioners. Meantime, the suit lands came to be acquired for Nilwande project and award came to be passed on 12.10.1988 and before that, the acquisition proceedings came to be initiated. Award contains the names of the legal heirs of Baburao Titame and Laxman Titame and even the notices of acquisition proceedings were also issued to them. Learned counsel submits that Baburao Titame was in possession of the suit lands and it was disturbed by the petitioners' father and some other persons and therefore, Baburao Titame had instituted Regular Civil Suit No. 72 of 1970 seeking a decree of perpetual injunction. The said suit came to be decreed.

11. Learned counsel for the respondent submits that the petitioners have instituted Regular Civil Suit No. 28 of 1989 against the legal heirs of Baburao Titame and Laxman Titame seeking specific performance of contract of agreement of sale dated 06.02.1981 and also contended that they are the owners of the suit

land on the basis of the agreement to sale dated 06.02.1981 and as such, they are entitled to the amount of compensation. Besides this, the real brother of the petitioners, namely, Ramhari Nana Awari had also instituted Regular Civil Suit No. 57 of 1989 contending therein that he is the owner of the suit land on the basis of the sale deed dated 27.11.1972 executed by Krushnarao Madhavrao Potnis and his family members.

12. So far as Regular Civil Suit No. 28 of 1989 is concerned, learned counsel for respondent no.1 submits that the petitioners have accepted and acknowledged the title of respondent no.1 and the legal heirs of Baburao Titame and Laxman Titame. The same is obvious for the reason that the petitioners herein had instituted Regular Civil Suit No. 28 of 1989 for specific performance of contract on the basis of the agreement to sale dated 06.02.1981 allegedly executed in their favour by respondent no.1 and the other legal heirs of Baburao Titame and Laxman Titame. Learned counsel submits that the judgment and decree passed in the said suits have attained finality and as such, the executing court has rightly given effect to the said judgment and decree and held that respondent no.1 is entitled for the compensation amount.

13. So far as Regular Civil Suit No. 57 of 1989 instituted by Ramhari Nana Awari (brother of the petitioners) against respondent no.1 and the other legal heirs of Baburao Titame and Laxman Titame for declaration and perpetual injunction in respect of the suit field survey no. 34, learned counsel for respondent no.1 submits that that the brother of the petitioners had instituted the said suit on the basis of the sale deed dated 27.11.1972 allegedly executed in his favour by Potnis family for a valuable consideration under the registered sale deed. Learned Civil Judge, Senior Division, Sangamner has recorded the finding in the negative to issue no.1 and thereby held that the plaintiff has failed to prove that he had purchased the suit property under the registered sale deed dated 27.11.1972 and since then he is in possession and enjoyment of the property as an owner thereof. Learned counsel submits that in the said suit, Ramhari Nana Awari, who happened to be the real brother of the petitioners, has specifically pleaded in the suit itself that respondent no.1 herein and the other legal heirs of Baburao Titame and Laxman Titame are the owners of the land survey nos. 127, 34-a and 34-b on the basis of the sale deed in favour of late Baburao Titame.

14. Learned counsel further submits that after dismissal of the suit R.O.R. proceedings came to be initiated in the year 2000 questioning the mutation entry in favour of Baburao Titame. The concerned Sub-Divisional Officer has allowed the appeal and set aside the mutation entries effected in favour of Baburao Titame. In the revision preferred against the said judgment and order passed by the Sub-Divisional Officer, the Additional Commissioner set aside the order by giving reference to the subsequent sale deed. Being aggrieved by the same, the petitioners' brother preferred revision before the Hon'ble Minister. Learned counsel submits that the same Sub-Divisional Officer, who had earlier set aside the mutation entries, was the P.A. to the Hon'ble Minister and therefore, the petitioners got succeeded in getting the order in their favour. Being aggrieved, respondent no.1 has preferred Writ Petition No. 3157 of 2012 before this Court which is admitted and interim relief has been granted. Learned counsel submits that there is no substance in this Writ Petition and the Writ Petition is thus liable to be dismissed.

15. I have also heard learned AGP for respondent nos. 2 and 3.

16. I find no substance in this Writ Petition. Undisputedly, the suit lands bearing survey nos. 34, 34-a, 34-b and 127 were originally belonging to one Krushnarao Madhavrao Potnis and his family members. On 23.11.1964, said Krushnarao Madhavrao Potnis had executed an agreement to sale in respect of the suit lands in favour of Baburao Laxman Titame (father of respondent no.1 herein). However, the sale deed was not executed and in consequence thereof, Baburao Laxman Titame had instituted Regular Civil Suit No. 9 of 1965 for specific performance of contract. By judgment and decree dated 28.04.1967, the Joint Civil Judge, Junior Division, Sangamner, sitting at Akole, dismissed Regular Civil Suit No. 9 of 1965. Further, the Extra Assistant Judge, Ahmednagar, by judgment and order dated 22.10.1969, dismissed Regular Civil Appeal No. 173 of 1967 preferred by Baburao Laxman Titame against the aforesaid judgment and decree passed by the trial court. On the basis of the aforesaid Judgment and decree passed by the trial court and confirmed by the appellate court, the petitioners herein would not acquire any title or right in respect of the suit property. The petitioners herein claim their right in respect of the suit property on the basis of the agreement to sale dated 06.02.1981 and further, the brother of petitioners, namely,

Ramhari Nana Awari, claims his right in respect of the suit property on the basis of the sale deed dated 27.11.1972 allegedly executed by the Potnis family in his favour. Said Ramhari Nana Awari claims his title in respect of the suit field survey no.34 only.

17. On careful perusal of the judgment and decree passed in Regular Civil Suit No. 28 of 1989, it appears that the petitioners herein had instituted Regular Civil Suit No. 28 of 1989 for specific performance of contract, in the alternate, declaration that they are entitled for the amount of compensation awarded by the Land Acquisition Officer and further, a decree of perpetual injunction restraining the defendants from receiving the amount of compensation etc. The petitioners herein had instituted the said Regular Civil Suit No. 28 of 1989 against respondent no.1 and other legal heirs of Baburao Titame and Laxman Titame. In paragraph no. 24 of the judgment and decree dated 29.09.1982 passed by the Civil Judge, Senior Division, Sangamner in Regular Civil Suit No. 28 of 1989, it appears that the learned Judge has given reference to the suit field survey nos. 127, 34-a and 34-b acquired by the Government and also observed that the suit field no. 34-b is not at all acquired by the Government. On the basis of

the documents and considering the pleadings and the evidence of the plaintiffs (petitioners herein), the learned Civil Judge, Senior Division, Sangamner held that the house of the plaintiffs (petitioners herein) as well as the well is situated in the suit field. Learned Civil Judge, Senior Division, Sangamner has further observed that there is no dispute that the plaintiffs (petitioners herein) have constructed a house in the field and they have also dug a well after taking possession of the suit field on the basis of the agreement in question. In the backdrop of these observations, learned Civil Judge, Senior Division, Sangamner has partly decreed the suit bearing Regular Civil Suit No. 28 of 1989 and thereby declared that the plaintiffs (petitioners herein) are entitled to receive the amount of compensation awarded by the Special Land Acquisition Officer pertaining to the house and well only and further dismissed the suit seeking decree of specific performance of contract, in alternate, claiming compensation pertaining to the suit land.

18. On careful perusal of the judgment and decree passed by the learned Civil Judge, Senior Division, Sangamner, dated 29.09.1992 in Regular Civil Suit No. 57 of 1989 instituted by Ramhari Nana

Awari (brother of petitioners herein) against respondent no.1 and the other legal heirs of Baburao Titame and Laxman Titame for declaration and perpetual injunction in respect of the suit field survey no. 34, it appears that the brother of the petitioners had instituted the said suit on the basis of the sale deed dated 27.11.1972 allegedly executed in his favour by Potnis family for a valuable consideration under the registered sale deed. Learned Civil Judge, Senior Division, Sangamner has recorded the finding in the negative to issue no.1 and thereby held that the plaintiff has failed to prove that he had purchased the suit property under the registered sale deed dated 27.11.1972 and since then he is in possession and enjoyment of the property as an owner thereof. It further appears that in the said suit, Ramhari Nana Awari, who happened to be the real brother of the petitioners, has specifically pleaded in the suit itself that respondent no.1 herein and the other legal heirs of Baburao Titame and Laxman Titame are the owners of the land survey nos. 127, 34-a and 34-b on the basis of the sale deed in favour of late Baburao Titame.

19. So far as Regular Civil Suit No. 28 of 1989 instituted by the present petitioners against respondent no.1 and other legal heirs of

Baburao Titame and Laxman Titame is concerned, the said suit came to be instituted seeking a decree of specific performance of contract, in the alternate, for compensation and as such, the petitioners have not disputed the title of late Baburao Titame in respect of the suit property. In Regular Civil Suit No. 57 of 1989, the brother of petitioners, namely, Ramhari Nana Awari has also admitted about the execution of sale deed in favour of late Baburao Titame in respect of the suit field survey nos. 127, 34-a and 34-b by Krushnarao Madhavrao Potnis for himself and his family members. In reply to the query made by this Court, respondent no.1 has placed on record the sale deed in respect of the suit property executed in favour of late Baburao Titame and others by Krushnarao Madhavrao Potnis for himself and on behalf of his family members on 19.06.1972. So far as the other three purchasers along with late Baburao Titame are concerned, there is reference in the sale deed itself that though the suit instituted by Baburao Titame bearing Regular Civil Suit No. 9 of 1965 came to be dismissed, the sale deed has been executed by acknowledging possession of late Baburao Titame over the suit land and the same is continued. There is no further reference as to what happened to the other three purchasers. However, all the while, late Baburao

Titame, and after his demise, respondent no.1 is now prosecuting the entire litigation for himself and on behalf of all the legal heirs of Baburao Titame and Laxman Titame. Even the petitioners herein have also not disputed the same and accordingly instituted the suit for specific performance of contract on the basis of the agreement to sale in respect of the suit land executed in their favour by respondent no.1 and other legal heirs of Baburao Titame and Laxman Titame in the year 1981. Furthermore, the petitioners herein have also not raised any such ground in their reply filed to the objection raised by respondent no.1 in the pending Darkhast. On the other hand, the petitioners have filed additional affidavit stating therein that for the first time respondent no.1 has placed on record the sale deed dated 19.06.1972. However, on careful perusal of the said affidavit and the annexures therein, it appears that in the year 2012 itself, the sons of the petitioners herein, namely, Sunil Sudam Awari and Sitaram Dnyaneshwar Awari had instituted Regular Civil Suit No. 23 of 2012 against respondent no.1 herein and the other legal heirs of late Baburao Titame and Laxman Titame and also against the petitioners herein for declaration that the above mentioned sale deed dated 19.06.1972 is not binding on them. I find no substance in the submissions

made on behalf of the petitioners that the petitioners had no knowledge about the said sale deed dated 19.06.1972 at any time. On the other hand, the petitioners herein, on accepting the title of respondent no.1 and his family members in respect of the suit properties, instituted Regular Civil Suit No. 28 of 1989 and further the real brother of the petitioners had also instituted Regular Civil Suit No. 57 of 1989 against respondent no.1 and his family members admitting therein the title of respondent no.1 and his family members over the suit land survey no. 34-a, 34-b and 127.

20. So far as the Revenue proceedings are concerned, though mutation entry no. 577 came to be sanctioned prior to the execution of sale deed dated 27.11.1972, however, in view of the sale deed executed in favour of late Baburao Laxman Titame by the Potnis family, the objection with regard to the mutation entry no. 577 would remain as a technical objection. It is necessary to observe here that mutation entry no. 639 came to be sanctioned on 20.11.1977 wherein names of the legal heirs of late Baburao Titame and Laxman Titame came to be mutated in respect of the suit lands.

21. In view of the above, I find no fault in the order passed by the executing court below Exhibit 47. In terms of the provisions of Section 47 of Civil Procedure Code, all questions arising between the parties to the suit in which the decree was passed and relating the execution, discharge or satisfaction of the decree are required to be determined by the court executing the decree and not by a separate suit. In the instant case, though respondent no.1 is not a party to L.R.A. No. 175 of 1991, however, rights of the parties have been decided by the Civil Court in the suit bearing Regular Civil Suit Nos. 28 of 1989 and 57 of 1989 respectively, confirmed by the appellate court in Regular Civil Appeal Nos. 236 of 2000 and 237 of 2000. The executing court has rightly decided the application Exhibit 47 in terms of the decree passed in the aforesaid suits which has attained finality. In fact, nothing remained to be decided and the executing court has simply acknowledged the judgment and decree in the aforesaid Regular Civil Suit Nos. 28 of 1989 and 57 of 1989 respectively and passed proper, correct and legal order. So far as the submissions made on behalf of the petitioners about fraud etc., there are no allegations to that extent in the reply filed by the petitioners herein to the objection raised by respondent no.1 before the executing court, nor do I find any *prima facie* material to

that effect. There is no substance in this Writ Petition. Hence I proceed to pass the following order.

ORDER

The Writ Petition is hereby dismissed and disposed off accordingly.

(V. K. JADHAV, J.)

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