

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

19 WRIT PETITION NO.15552 OF 2019

DHODIBA NAMDEO BHOSLE DECEASED LRS VIKRANT VILAS
BHOSLE AND OTHERS
VERSUS
NARSIMHACHARYA HANMANTACHARYA LAKHANE AND
OTHERS

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Advocate for Petitioners : Mr. V.D.Salunke h/f Mr. S.B.Madde.
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CORAM : V. K. JADHAV, J.
DATE : 06.01.2020

PER COURT :-

1. Heard the learned counsel for the petitioners.
2. The petitioners / original Judgment Debtors have preferred this Writ Petition against the order passed by the learned Civil Judge Senior Division, Udgir, below Exh.134, dated 04.11.2019 in Regular Darkhast No.5 of 2018.
3. The application has been preferred by the Decree Holder for issuance of possession of warrant of the decreetal property in terms of the decree passed in Regular Civil Suit No.162 of 1971, which has attained the finality. The petitioners / original Judgment Debtors have opposed the application. The learned

counsel for the petitioners submits that the L.Rs. of the Decree Holder are not taken on record inspite of his death and even the L.Rs. of Judgment Debtor No.2 are also not taken on record after his death. The learned counsel submits that even the competency of the advocate prosecuting the execution on behalf of the Decree Holder has also been raised for want of valid Vakilpatra. The learned counsel submits that as far as the identification of the property under execution is concerned, neither the layout plan nor the documents showing the exact location of the plot has been placed on record. The learned counsel submits that despite these objections, the learned Judge of the Executing Court has issued the possession warrant under Order 21 Rule 35 of the Civil Procedure Code with a specific direction to the bailiff to execute the said possession warrant and deliver the possession of the decreetal property to the Decree Holder with the police assistance, if required.

4. It appears that the decree has attained the finality after the parties fought the litigation, upto the Hon'ble Apex Court. Furthermore, the objection petition filed by one Anwarbi also unsettled and attained finality. It further appears that the Executing Court has observed that the Vakilpatra (Exh.20)

produced on record shows that the learned counsel appearing for the Decree Holder is having authority to conduct the same. Even the learned Judge of the Executing Court by giving reference to the copies of the Adhar Cards produced on record observed that the Decree Holder are alive. So far as the identification of the decreetal property is concerned, the learned Judge of the Executing Court has specifically observed that this is not the first attempt of the Decree Holder for issuance of the possession warrant and the earlier warrant was issued way back in the year 1982 i.e. on 30.04.1982. The learned Judge of the Executing Court has also given a reference to the panchnama prepared by the concerned bailiff on 08.01.1983 and a report thereon at Exh.34 which goes to show that the decreetal property has been identified by the concerned bailiff without any difficulty. The decree is passed way back in the year 1975 and Decree Holder is yet to realize the fruits of the decree. I do not find any fault in the order passed by the Executing Court. There is no substance in this Writ Petition. Hence, I pass the following order :

ORDER

The Writ Petition is dismissed.

(V. K. JADHAV, J.)

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vmk/-