

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

7 WRIT PETITION NO.804 OF 2020

SANDIP BHIMRAJ BODHAK AND OTHERS
VERSUS
LATA CHANDRABHAN SHELKE AND ANOTHER

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Mr. K.C. Sant, Advocate for the petitioners.

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CORAM : **Rohit B. Deo, J.**

DATE : 22nd January 2020.

PER COURT :-

. The petitioners preferred objection in Execution Petition No. 93/2013, purportedly under Order 21 Rule 97 of the Code of Civil Procedure, objecting to the execution of decree for specific performance suffered by the father of objector Nos.1 to 4 and husband of objector No.5. By the order impugned the Executing Court was pleased to reject the application under Order 21 Rule 97 of the Code of Civil Procedure.

2. I have scrutinized the reasons recorded by the Executing Court and having done so, I am satisfied that the order impugned does not suffer from any error much less an error warranting interference in writ jurisdiction.

3. Regular Civil Suit No. 80/2009 was brought by Lata Shelke against Bhimraj, father of objector Nos.1 to 4 and husband of objector No.5 for specific performance. The suit was dismissed by the trial Court. The Appellate Court reversed the decree and granted specific performance which was confirmed in second appeal. The Special Leave Petition was dismissed by the Supreme Court.

4. The objectors would submit that the suit property is their ancestral property which is not partitioned, and therefore, Bhimraj has no right to alienate the suit property. It is further submitted that Bhimraj was addicted to liquor and was illiterate. Several other submissions are canvassed including the submission that there was no legal necessity for Bhimraj to alienate the property. It is further submitted that the objectors have filed suit for partition bearing Regular Civil Suit No. 665/2013.

5. Decree Holder pointed out that similar application was preferred by the objectors below Exh.24 which was rejected. Again the objectors preferred an application (Exh.44) raising the very same grounds, which was also rejected.

6. The trial Court has rightly held that Executing Court cannot go behind the decree. It is further correctly held that Order 21 Rule 97 of the Code of Civil Procedure has no application. The issue is considered by the trial Court thus :

“5. According to decree holder, objection petitioners have filed similar application below exhibit 24 under Order 21 rule 35, 97, 58 and section 47. The application was rejected. Again objection petitioners moved application below exhibit 44 on same grounds. The said application was also rejected by the court. Such type of applications are filed by objection petitioners in collusion with judgment debtor to obstruct the execution proceeding.

6. Order 21 Rule 97 deals with resistance of obstruction to possession of immovable property. Sub rule 1 reads that where the holder of the decree for the possession of immovable property or the purchaser of any property sold in execution of the decree is resisted or obstructed by any person in obtaining possession of the property he may make an application to the court complaining of such resistance or obstruction. Rule 101 explains the questions which can be determined by the order under rule 97 and 99. All question relating to right, title and interest in the property arising between the parties to the proceeding on an application under 97 and 99 or their representatives are relevant to the adjudication and shall be determined by the court dealing with the application.

7. Objection petitioners are children of judgment debtor. They are claiming their right in the suit property being children of Judgment debtor. According to them suit

property is their ancestral property. The property is not yet partitioned. They are having share in the suit property. Judgment debtor was not having right to alienate the suit property. Moreover the agreement to sale was got executed by the decree holder by playing fraud on judgment debtor”.

7. I do not see any error in the order impugned.
8. The petition is dismissed.

(ROHIT B. DEO, J.)