

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.116/2020

(Girish Upadhyay and others V Anantrai Upadhyay and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.P. Dhruv, Adv for petitioners.

CORAM : S.M. MODAK, J.
DATE : 31-01-2020.

Heard learned Advocate for the petitioners/judgment debtors.

2. There is a preliminary decree passed by the Court of Civil Judge, Senior Division, Wardha on 13-10-2003. These judgment debtors are the defendants therein. The said preliminary decree has been confirmed by this Court in the proceeding of Second Appeal. It has attained finality.

3. The plaintiff/decreed holder has filed proceeding for final decree being F.D.P.No.10/2003. There is an order of appointment of Commissioner. The suit property consists of house property as well as non-agricultural land. The Commissioner submitted his report on 05-07-2006. Thereafter, the decreed holder has requested the Executing Court for sale of the properties. The said application was moved on 14-02-2018. After hearing both the sides, the Executing Court was pleased to order sale of the property by issuing proclamation. It was passed on 17-03-2018. The said order is being challenged by these plaintiffs/judgment debtors.

4. It is submitted that proclamation was issued as per the orders passed by the Executing Court. It is also submitted that the said proclamation has been stayed by this Court in a separate Writ

Petition No.6702/2019 and subsequent sale has been stayed by this Court. A query is made whether in that Writ Petition the order dated 17-03-2018 is challenged or not. For want of instructions, the statement has not been made. But, it is important to note that the proclamation which is challenged in a separate Writ Petition, has been issued on the basis of earlier orders. So, it is but natural for the judgment debtors/present petitioners to challenge the order dated 17-03-2018 in that Writ Petition. I think, if this Court will conduct an enquiry about the correctness of the impugned order dated 17-03-2018, there is possibility of conflicting judgments. So it is better for the petitioners/judgment debtors, to challenge this order dated 17-03-2018 in connected Writ Petition.

5. The petitioner is at liberty to move necessary application before the Court seized of that Writ Petition.

6. In view of the above, the present petition does not survive. Hence, the same is disposed of accordingly. No costs.

JUDGE