

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4493 OF 2020

Lachmansingh s/o Rampratapsingh Hajari

Died through L.R.

Subhash s/o Lachmansingh Hajari

...PETITIONER

VERSUS

M/s Rajeshwar Bimrao Patil & Company

and others

...RESPONDENTS

.....

Petitioner Subhash Lachmansingh Hajari present in person
Shri A.D. Ostwal, Advocate for respondent No.3.

.....

CORAM : R. G. AVACHAT, J.

DATE : 10th FEBRUARY, 2021

ORDER :

The challenge in this Writ Petition is to the order dated 28/11/2019, passed by Civil Judge, Senior Division, Ambajogai, below Exh.322 in decree execution proceedings, being Regular Darkhast No.47/2012. By the impugned order, the application preferred by Judgment Debtor No.3 for directions not to release the sum of Rs.3,69,100/- in favour of the Decree Holder (D.H.) came to be allowed. The D.H., one of the legal representatives of the original D.H. is, therefore, before this Court.

FACTS :-

2. The father of the petitioner had filed the suit, Special Civil Suit No.38/1988 for declaration that sale deed dated 13/7/1976 executed in favour of the respondents was nominal and sham. It was a transaction in the nature of a mortgage. The suit came to be decreed. It appears that, the decree passed in the said suit has attained finality. So has been observed by this Court on 19/8/2016 in Writ Petition No.5277/2016. Learned counsel for the respondent/ J.D. also could not show that the decree passed in Special Civil Suit No.37/1988 is under challenge and there is a stay to the execution thereof.

3. The petitioner (D.H.) initiated execution proceedings. A reconveyance deed came to be executed in favour of the D.H. The deed was executed by Court official appointed by Court in execution proceedings. As per the terms of the decree, the deed of reconveyance was to be executed by the J.D. at his cost. Since the J.D. did not pay/ deposit the cost required for execution of a deed of reconveyance, it was the petitioner (D.H.) who paid the sum of Rs.3,69,100/- for execution of reconveyance deed in his favour. The D.H. later on moved the application for recovery of the said amount from the J.D. It is only when the warrant

of attachment of the immovable property of the J.D. was issued, the sum came to be deposited in the Court.

4. The aforesaid facts undoubtedly indicate the petitioner to be entitled to receive the said amount. The J.D. filed the application Exh.322 on the ground that the decree has been under challenge in two suits and the Writ Petition preferred by them against the decree and execution of reconveyance in favour of D.H. Learned counsel for the J.D. would submit that original D.H. has six Class-I heirs. The present petitioner is only one of them. He would at the most be entitled to 1/6th share in the amount. Learned counsel would also submit that the petitioner be directed to give Bank guarantee, if the Court directs to pay him the amount.

5. It is reiterated that, the decree appears to have attained finality. It was the petitioner who had deposited the amount required for execution of the reconveyance deed, when it was responsibility of the J.Ds. to pay the sum. The petitioner is, therefore, entitled to get back his amount which has been recovered from the J.Ds. after issuance of warrant of attachment of immovable property. It appears that, the petitioner has been pursuing the execution proceedings. Other legal representatives of original D.H. are not before this Court. The Court's direction to pay the amount to the

petitioner would absolve the J.Ds. of their liability towards other L.Rs. Of original D.H. It will be an issue inter-se legal representatives of original D.H. Since it was the petitioner who has deposited the amount, it is he who would be entitled to get it back. The Executing Court ought to have rejected the application Exh.322. Interference with the impugned order is, therefore, called for.

6. The order impugned in this Writ Petition is set aside. The Executing Court shall pay the amount of Rs.3,69,100/- to the petitioner on his furnishing a solvent surety besides an undertaking to pay back the amount to the Court, if so directed. Writ Petition stands disposed of in aforesaid terms.

**(R. G. AVACHAT)
JUDGE**

fmp/-