

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8140 OF 2016

Ganu Dhondi Ingale Petitioners
(Since deceased) thru' his heirs
& LRs, Sau. Vishnu Ganu Ingale
& Ors.

Vs.

Nana Maruti Ingale Respondents
(Since deceased) thru' his heirs
& LRs., Sau. Malan Nana Ingale
& Ors.

Mr. Girish S. Godbole i/by Mr. Rajaram V. Bansode for Petitioners.
Mr. S.S. Patwardhan i/by Purushottam Chavan for Respondents

Coram : NITIN W. SAMBRE, J.
Date : 4th MARCH, 2021

P.C.:

1. Heard Mr. Godbole, learned counsel appearing for the
Petitioners- Judgment debtors.

2. Regular Civil Suit No. 87 of 1964 preferred by one Ganu for
partition and possession came to be decreed in 1967. The said decree

was confirmed in an appeal being Regular Civil Appeal No. 225 of 1967 resulting in filing of execution proceedings being Regular Darkhast No. 2 of 1969.

3. In the fresh execution proceedings being Regular Darkhast No. 68 of 2009, in compliance with the provisions of Section 54 of C.P.C., the executing Court forwarded the decree for execution by effecting partition by meets and bounds to the Collector/his subordinate officers.

4. The Petitioner, a party to the execution proceedings, took out review proceedings under Section 114 read with Order 47, Rules 1 and 2 of C.P.C. seeking review. The application for review was accompanying with a prayer for condonation of delay. Vide impugned order dated 23rd September, 2015, the Court below rejected the prayer for condonation of delay. As such, this petition.

5. The submissions of Shri. Godbole are that in an earlier round of execution being R.D. No.219 of 1969, the decree for partition was already executed as could be inferred from the order of disposal of

the said execution proceedings passed on 27th September, 2015. In that background, the fresh execution proceedings were maintainable. According to him, the delay caused in preferring an application for review was justified as the Petitioners, a rustic persons are not aware of their legal rights, are not properly advised. It is also claimed that the Petitioners were pursuing the remedy before the revenue authorities and as such delay was caused.

6. The Counsel for the Respondents supports the order impugned.

7. As far as the earlier execution proceedings being Regular Darkhast No. 219 of 2016 is concerned, though same was disposed of vide order dated 27th September, 1999, it is difficult to infer from the said order that the decree for partition, which is under execution has attained finality. Rather, it is apparent that the execution proceedings in the earlier round of execution were not taken to its logical end and no finality was attained in the matter of drawing partition decree.

8. This Court has appreciated contentions of Mr. Godbole that the Petitioner is a rustic person and was not given proper advise to prefer the present review application within time. The Petitioner was party to the Civil suit for partition and thereafter to the execution proceedings. In that view of the matter, it cannot be inferred that the Petitioner has no knowledge about the conduct of the legal proceedings. Rather steps taken by the Petitioner of objecting the execution proceedings before the revenue authorities, sufficiently speaks of the knowledge of the Petitioner about the pendency of execution and the passing of the order under Section 54 of C.P.C.

9. In that view of the matter, the Court below was justified in rejecting the prayer for condonation of delay as the Petitioner has failed to establish sufficient cause in support of prayer for condonation of delay.

10. In that view of the matter, no case for interference in he impugned order is made out. The petition fails, dismissed.

(NITIN W. SAMBRE, J.)