

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

WRIT PETITION NO. 5086 OF 2021

**SNEHA
NITIN
CHAVAN**

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Smt. Surekha Suresh Salunkhe
since deceased through her
legal heirs Mrs. Nutan Arun Chavan
and Ors.

.. Petitioners

V/s.

Mr. Jayant Tukaram Bhosale

..Respondent

Ms. Vishakha Pandit i/b Avinash Fatangare for the Petitioners.

CORAM : C.V. BHADANG, J.

DATE : 06 SEPTEMBER, 2021

PC.

1. The challenge in this petition is to the order dated 14 February 2021 passed below Exh. 92 by the Executing Court in Regular Darkhast No. 30 of 2004. The Petitioner are the legal heirs of original Defendant No.1 Surekha Salunkhe (since deceased). Respondent Jayant Bhosale along with seven others had filed Regular Civil Suit No. 57 of 1997 against late Surekha Salunkhe and others for partition and separate possession in respect of land bearing Survey No. 2/1 admeasuring 0.33.11 H. situated at village Revas, Taluka Alibag and the house property bearing House No. 399 (old house No. 305) of grampanchayat Revas.

2. The learned Trial Court by a Judgment and Decree dated 31 October 1998 has partly decreed the suit to the extent of granting 1/3rd share in the agricultural land. The learned Trial Court, however, refused to grant a share in the house property. This was challenged by the plaintiffs in Civil Appeal No.173 of 1998. The learned District Judge at Alibaug by a Judgment and Order dated 28 July 2004 has allowed the appeal and granted the share in the house property also as set out in the said Judgment. The petitioners Surekha Salunkhe and Nutan Salunkhe have challenged the said decree before this Court in Second Appeal (ST) No. 3511 of 2017 which is pending. The execution application is filed for execution of the said decree.

3. It appears that by an order dated 05 November 2016 below Exh. 85, the Executing Court directed issuance of the possession warrant in respect of room No. 11 and 12 as shown in the map annexed to the application. The Petitioner filed application Exh. 92 on 30 January 2017 for condonation of delay in filing application, Exh.93 to set aside the said order dated 05 January 2016 passed below Exh. 85. It appears that the Executing Court heard both these applications and by impugned order dated 14 February 2020 has rejected the application Exh. 92.

4. I have heard the learned counsel for the Petitioners. Perused record. The record discloses that the application Exh.85 seeking possession of room Nos. 11 and 12 was filed on 28 December 2015. The Executing Court had recorded that there was no reply filed to the said application by the Judgment Debtor. Such orders were passed on 20 January 2016 and 23 March 2016. After this, application Exh. 85 was decided on 05 November 2016 directing issuance of possession warrant in respect of room Nos. 11 and 12. The record further discloses that the possession warrant was executed as per the report/panchnama of the bailiff dated 11 January 2017. The possession receipt is shown to be signed by the Judgment Debtor No.1. It can thus be seen that the part of the decree pertaining to the house/residential property in respect of room Nos. 11 and 12 has already been executed/satisfied on 11 January 2017. The execution pertaining to the agricultural land is said to be pending. It is significant to note that the Petitioner had failed to file a reply since 28 December 2015 till on 05 November 2016. The Petitioners have not shown any acceptable reason for their failure to file the reply.

5. In that view of the matter, I do not find that case for interference in the impugned order is made out in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed.

C.V. BHADANG, J.