

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

WRIT PETITION NO.4903 OF 2021

Varsha Pramodrao Thakre and others

Vs.

Ankush s/o Narayanrao Mahalle and others

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

Court's or Judge's orders

Mr. Abhay Sambre, Advocate for petitioners.

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/12/2021

Heard Mr. Sambre, learned counsel for the petitioners.

2. The petition challenges the order dated 26.10.2021 passed by the learned Executing Court whereby the objection filed by the objectors who are the grand sons and daughters of the original defendant No.1 under Order 21 Rules 97 to 105 of the CPC claiming that the suit property was an ancestral property, has been rejected. Mr. Sambre, learned counsel for the petitioners vehemently contends that the learned Executing Court has failed to appreciate the evidence led on record by the objectors, which indicates that the property is an ancestral property, and therefore, the original defendants, did not have any right to execute the agreement of sale in favour of the decree holders/plaintiff. He invites my attention, to the evidence of Objector Witness (O.W.) - 1 Shri Naresh Shalik Mahalle below Exh. 59 who has categorically deposed that the property in question was an ancestral property, and therefore, the original

defendants did not have any right to execute the said agreement. It is therefore contended that the impugned order which does not take into consideration the said evidence in its proper prospective cannot be sustained.

3. A perusal of the impugned order, indicates the nature of evidence which has been tendered by O.W.- 1. Merely stating that the property in question was an ancestral property, would not, in my considered opinion, satisfy the requirement of law, for an according finding. Except for making a statement on oath O.W. - 1, has not substantiated the same, by any document whatsoever. Had it been a case that the suit property was an ancestral property, there would have been entries in the 7/12 extracts or the record of rights as maintained under the Maharashtra Land Revenue Code, recording the nature of the property, considering that the same was an agricultural property. However, not a single document has been placed on record, nor have the revenue authority been summoned and examined neither the record requisitioned, which would indicate the absence of any material to substantiate this plea. In my considered opinion, the learned Executing Court has rightly considered the evidence led by the objectors of O.W. - 1 and I do not find any fault in the conclusions arrived at by the learned Executing Court. I therefore, do not find any merit in the petition. The same accordingly dismissed. No costs.