

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14617 OF 2017
WITH CA/854/2018 IN WP/14617/2017

BHAUGBAI DASHRATH GORE DIED THROUGH LRS KADUBAL
GOVIND GORE
VERSUS
ASHRU NATHU GORE DIED LRS DAGDABAI ASHRU GORE AND
OTHERS

Mr.S.R.Sapkal h/f Mr.V.D.Sapkal, Advocate for the petitioner.
Mr.A.A.Jagatkar, AGP for respondent No.5.
Mr.B.S.Dhawale, Advocate for respondent No.1 (B to D), 2(A to C) 3
and 4.
Mr.Kodale h/f Mr.A.V.Hon, Advocate for the intervenor.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 18, 2022

PER COURT :

1. The short grievance of the petitioner is that the decree in RCS No.40/1980 needs to be executed. The longest narration of the facts in the petition can be cut short by stating that RCS No.40/1980 filed by the plaintiff Bhagubai Gore is decreed on 27/02/1997 and the plaintiff is entitled to 5/12th share in the suit property, whereas the defendant Nos. 1, 2 and 3 are also eligible for their respective shares. The judgment dated 27/02/1998 directed that for effecting the partition

and possession, the copy of the decree be sent to the Collector u/s 54 of the CPC since the land was an agricultural land on which revenue was paid.

2. The present petitioner claimed his right through the original plaintiff Bhagubai on the basis of a Will.

The attempts on the part of the defendants to restrain the execution of this decree in Reg.Dkt.No.17/2004 failed and even the independent suits filed by the defendants came to be dismissed and so also the suit RCS No.100/2005 filed by the purchasers from the said respondents also failed. All these attempts being unsuccessful, the Civil Judge, Jr.Division, Newasa recorded that the decree has to be executed as it is and there is no stay granted to its execution. But still he is unable to execute the said decree, but still the decree remains unexecuted as on date and this is for the reason that the Additional Collector sought an opinion from the learned Civil Judge and awaiting the said opinion, the Collector has refrained himself from proceeding. My attention is invited to the letter of the Additional Collector addressed to the learned Civil Judge, Sr.Division seeking his opinion by stating that when the order was passed on 04/09/2017 by the learned

Judge, there was no reference to the Will of Mr.Laxman Dashrath Kashid and one Suman Ankush Harde. The learned Authority is reminded of the fact that no Court can go beyond the decree and the decree is to be executed as it stands. Whatever objections are to be raised in form of any objection / obstruction by the obstructionist, are to be determined in terms of Order XXI of the CPC, if raised. I do not see any justification or legal provision permitting the Collector who is directed to execute the decree to seek opinion of the Court.

3. With the aforesaid clarification, the writ petition do not warrant any interference. On the decree being passed by the Court of competent jurisdiction, it needs to be executed as per the directions issued in the judgment and when the Collector is directed to execute the decree, he is bound to do so. Nothing more is required to be stated.

4. Writ petition is disposed off as such.

(BHARATI H. DANGRE, J.)