

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4822 OF 2019

NANDALAL DHONDU PATIL AND OTHERS
VERSUS
NANDLAL WAGHUMAL KUKAREJA THROUGH LRS GARUBAI
NANDALAL KUKAREJA AND OTHERS

Advocate for Petitioners : Mr. M.M. Bhokarikar
AGP for Respondents: Mr. S.W. Munde
Advocate for Respondents No. 1-A to 1-G: Mr. Girish Wani
Advocate for Respondents No. 2: Mr. D.S. Joshi

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th JULY, 2022

ORDER :

1. The petitioners are aggrieved by the impugned judgment and order dated 19.03.2019, passed by learned Civil Judge, Junior Division, Erandol, below Exhibit-97 in Regular Darkhast No. 20/2001.

2. The suit for specific performance i.e. Special Civil Suit No. 84/1989 was filed by respondent No. 1 against the father of the petitioners. The suit was decreed ex-parte by the Trial Court on 16.04.1994. Execution petition is filed for execution of said decree.

3. The petitioners filed application Exhibit-84 seeking their impleadment as respondents in the execution proceeding contending that the suit land was tenanted joint hindu family property. Grandfather of the petitioners was tenant in the said land. After the death of grandfather, name of father and aunt of the petitioners was recorded to the said land. Their father without there being any legal necessity executed agreement to sale. Though, the petitioners had share in the said land ignoring that and though there was bar under section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948, the agreement of sale was executed. Said transaction between their father and respondent No. 1 is bogus since the petitioners have share in the said property. This application is rejected by the Executing Court by order dated 25.01.2019 observing that:

"Admittedly, applicants are legal representative of JD. Plaintiff/DH has paid Nazarana and ready for execution of sale deed. Executing court can't go go beyond decree. Further, property under decree was agreed to be sold by JD and his property which is binding on his legal heirs under succession is not pending as JD is alive. Hence, application is rejected as applicants are not necessary party for execution or during decree."

4. Thereafter, petitioners have filed application Exhibit-97 under Order XXI Rule 97 of Code of Civil Procedure seeking stay to the execution proceeding objecting to the execution of decree. Said application is rejected by the Executing Court. Hence, the present petition.

5. Heard the learned advocate for the petitioners and learned advocate for respondents.

6. Learned advocate for the petitioners in support of the writ petition and his arguments relied on following judgments:-

i) Shreenath and another Vs. Rajesh and others (1998 AIR SCW 1619).

ii) Kuber Housing Investments and Finance Private Limited Vs. TCI Finance Limited (2013 (5) ABR 11).

iii) Ratnakar Bank Ltd., Kolhapur Vs. State of Maharashtra (2016 (1) ABR 612)

iv) Arshnoor Singh Vs. Harpal Kaur (AIR 2019 SC 3098)

v) M/s. Chitivalasa Jute Mills Vs. M/s. Jaypee Rewa Cement (AIR 2004 SC 1687)

vi) Ganesh Ramchandra Thakur Vs. Gopal Laxman Thakur (AIR 1943 Bom 12)

- vii) Narayan Vitthal Samant Vs. Jankibai Sitaram Samant (AIR 1915 Bom 146)
- viii) S.C. Jain Vs. Bindeshwari Devi (C.R. No. 335/1997, decided on 24.04.1997, Delhi High Court)
- ix) Maya Devi Vs. Lalta Prasad, (AIR 2014 SC 1356)
- x) N.S.S. Narayan Sarama Vs. M/s. Goldstone Exports (P) Ltd. (AIR 2002 SC 251)
- xi) Amir Chand Vs. Bakshi Harihar Prashad Singh and others (Privy Council) decided on 25.11.1915.
- xii) A. Palansisamy Vs. Savithri (C.R.P. (NPD) No. 650/2016 decided on 30.03.2016)
- xiii) Roshanlal Jagannath Agrawal Vs. Avinash Narsingshaw Kshatriya (AIR 2003 Bom 31)
- xiv) Rajeev Dutta and others Vs. Punjab Wakf Board and another (FAO Nos. 22, 23 and 24 of 2002 decided on 28.11.2002 by Himachal Pradesh High Court)
- xv) Afirf Abdul Gani and other Vs. S. Maheshwar Rao and others (Appeal Against Order Nos. 786, 801, 1058, and 1059 of 1998 decided on 21.07.1999 by Hon. Andhra Pradesh High Court)
- xvi) Sri. Bibhuti Bhusan Dutta Vs. Dr. Samarendra Nath Misra (Appeal from Original Order No. 239/1998 decided

on 18.06.2002 by Hon. Calcutta High Court)

xvii) Gundila Manjappa Shetty Vs. Manjakke Shedthi and others (AIR 1961 Mysore 268)

xviii) Baliram Ganpatrao Bhoot Vs. Manohar Damodar Bhoot (AIR 1943 Nag 204)

xix) Kammana Sambamurthy Vs. Kalipatanapu Atchutamma (AIR 2011 SC 103)

xx) Smt. Vishambari Daulatram Kamwani Vs. Ram Jageshwar Banwari (2019 (3) ABR 521)

xi) Akhtar Un Nisa Vs. Rehman Ahrried, (Civil Revision Petition No. 95/2007 dated 21.03.20147 (Rajasthan High Court)).

7. The learned advocates for the respondents and the learned Assistant Government Pleader supported the impugned order.

8. The decree passed in Special Civil Suit No. 84/1989 on 16.04.1994 is yet not executed though, almost more than two decades have passed. It appears from the record that the decree was challenged by the petitioners father/respondent No. 2 after two years delay in appeal. Second appeal was filed against the dismissal of appeal, after a delay of almost 20 years,

same is also dismissed. Now, the petitioners are trying to intervene in the present matter so as to avoid execution of decree which is passed against their father in the year 1994. The decree passed against respondent No. 2 is binding on the petitioners, they being legal heirs of respondent No. 2. They are not third party.

9. It is pertinent to note here that the order passed below Exhibit-84 rejecting the application of the petitioner for impleadment as respondents in the execution petition is not challenged by the petitioners so far.

10. Perusal of impugned order reveals that the Executing Court has taken into consideration the documents placed on record and has rightly held that after the decree holder has complied with the conditions of decree, judgment debtor/respondent No. 2 has now started resisting the decree through his son and daughter/petitioners. All sorts of objections are being raised so as to avoid execution of decree. Admittedly, the petitioners are not party to the decree. They were not party to the suit, appeal or execution proceeding.

11. Taking into consideration these peculiar facts, this appears to be another attempt on the part of judgment debtor/respondent No. 2 to avoid execution of decree. Though the petitioners contend that they have filed Regular Civil Suit No. 11/2018 for partition and declaration that decree passed in Special Civil Suit No. 84/1989 is not binding on them, same will take its own course and for that, it is not necessary to stay the execution proceeding.

12. Another contention of the petitioners that the Executing Court ought to have permitted the petitioners to lead evidence, also cannot be accepted in the facts of the present case. The Executing Court has adjudicated application Exhibit-97 on the basis of documents placed on record. By considering the record, the Executing Court was in a position to adjudicate the dispute between the petitioners and respondents. The Executing Court therefore thought it unnecessary to ask the parties to lead evidence when the documents on record are relevant for the adjudication of the application. In that view of the matter, no fault can be found with the order passed by the Executing Court.

13. Ratio of all the citations relied by the petitioners appears to be that when there is resistance or obstruction to the possession in execution proceeding by third party, the Executing Court has to determine issues arising in the matter in an application under Order XXI Rule 97.

14. This is a settled legal position and there cannot be any dispute about the same. However, in the present case, since, petitioners are legal heirs of the judgment debtor/respondent No. 2, the decree is binding on them. Since, the Executing Court has passed the impugned order on the basis of record, it is not necessary to allow the petitioners to lead evidence in the present case.

15. The judgment in Maya devi (supra) is decided in different facts and since the objection petition is decided on merits by the Executing Court, this ruling is of no help to the petitioners.

16. For the aforestated reasons, there is no substance in the writ petition. The Executing Court has passed a well reasoned order. No illegality or perversity is found in the impugned order. The writ petition is therefore dismissed.

17. Interim relief stands vacated.

18. At this stage, the learned advocate for the petitioners requested that interim relief granted in favour of petitioners may be continued for a period of four weeks.

19. The learned advocate for the respondents vehemently opposed the said prayer.

20. For the reasons stated in this order, the request is rejected.

21. The amount of Rs. 2,00,000/- (Two Lakhs only) deposited by the petitioners in this Court be remitted to the Executing Court.

[NITIN B. SURYAWANSHI, J.]