

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 WRIT PETITION NO.6196 OF 2022

**DNYANOBA TUKARAM KODMANGALE
VERSUS
BHAGABAI SHANKAR MORE AND OTHERS**

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Advocate for Petitioner : Mr. D.A. Mane h/f.
Mr. Milind Madhukar Patil
Advocate for Respondent No.3 : Mr. B.R. Kedar

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CORAM : SANDEEP V. MARNE, J.

DATE : 21-12-2022

PER COURT :

. This petition is filed challenging the order dated 02.01.2020 passed by Jt. Civil Judge J. D., Ahmedpur rejecting the application at Exh.12.

2. Petitioner is judgment debtor being a son of Tukaram Kodmangale. R.C.S. No.140 of 1985 was filed by Shankar More for recovery of possession of property admeasuring 3 Acre, 18 Guntha from Tukaram Kodmangale. The suit came to be decreed on 31.07.1997. The appeal filed by Tukaram Kodmangale was admitted by condoning the delay and imposing costs. On account of non payment of costs, the appeal came to be dismissed on 31.07.2003. In the meantime, there has been certain other developments. One Vaijanath had filed R.C.A. No.129 of 1997

challenging the decree dated 31.07.1997 passed in R.C.S. No.140 of 1985. That appeal came to be compromised between Shankar More and Vaijanath thereby agreeing to allot the land admeasuring 20 Are to Vaijanath while retaining rests of the land in favour of Shankar. Later on 30.01.2008 both Shankar and Vaijanath sold the entire property admeasuring 3 Acre, 18 Guntha to Mahesh Dhakne. Petitioner instituted R.C.S No.211 of 2009 claiming possession of the suit property admesuring 3 Acre, 18 Guntha and seeking injunction against Shankar, Vaijanath and Dhakne from disturbing his possession. The suit was decreed on 15.03.2014. Since Mr. Dhakne was restrained from disturbing the possession of the plaintiff over the suit property, he filed R.C.S. No.396 of 2015 against the petitioner seeking recovery of possession of the property.

3. Under the above backdrop, the legal heirs of Shankar have filed execution proceedings for execution of the decree dated 31.07.1997 passed in R.C.S. No.140 of 1985. The decree dated 31.07.1997 passed in R.C.S. No.140 of 1985 has attained finality. The petitioner is under obligation to handover possession of the entire land admeasuring 3 acre 18 guntha to Shankar / his legal heirs. The transactions taking place between Shankar and Vaijanath and later, with Shri. Dhakne are not of little concern with petitioner.

Thus the objection filed by petitioner in Darkhast filed by the legal heirs of Shankar was clearly misconceived.

4. The learned counsel for petitioner submits that the darkhast was otherwise barred by limitation. He counts the period of limitation from the date of decree i.e. 31.07.1997 and contends that the execution proceedings filed on 22.07.2005 are beyond the period of limitation of 12 years under Article 136 of the Limitation Act, 1963. He submits that even if the date of dismissal of appeal (M.A No.53 of 2002) filed by petitioner is taken into consideration, still the execution proceedings are barred by limitation.

5. I am not impressed with contentions raised by the learned counsel for petitioner on the issue of limitation. Though the decree was passed on 31.07.1997, the same was pending before Appellate Court upto 31.07.2003. Therefore the cause of action for seeking execution arose on 31.07.2003. The execution proceedings are filed within the period of 12 years on 22.07.2005. Thus *prima facie* the execution proceedings appear to be within limitation.

6. Considering overall facts of the case, I am of the view that the trial Court has not committed any error in rejecting the petitioner's objection (Exh.12) to the execution proceedings. The

petition is devoid of merits and the same is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

GGP