

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10024 OF 2022

Nasiroddin Khabulal And Others

...Petitioners

Versus

Malanbi Dattatray Amrapurkar
Died Through Lrs Sushilabai Govindrao
Shelmohakar Died And Others

...Respondents

Mr. Rajendra Deshmukh, Senior Advocate a/w. Mr. Amol Joshi
i/by. Mr. Devang Deshmukh, Advocate for the petitioners.
Mr. G.K. Naik Thigle, Advocate for respondents No. 1A-

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th SEPTEMBER, 2022

ORDER :

1. The petitioners are judgment debtors in Regular Darkhast No. 81 of 1982. They filed application Exhibit-166 claiming that out of suit land decree holder sold 5 Acre land to Mubin Shaikh, Ramrao Sirsat, Shankar Sirsat and Lakhan Sirsat and their names are mutated in the revenue record. The judgment debtors with their more than 100 family members are residing in the suit land and they have raised RCC construction and seven tin sheds there and that decree holder Sushila has two sons, Uday and Satish and she has given the suit land to them and they are necessary parties in execution and therefore,

by allowing the application necessary inquiry may be made to find out truth of the case, before hearing and passing order below Exhibit-108 i.e. application for issuance of possession warrant. The Executing Court rejected the application and said order is impugned in Writ Petition No. 6174 of 2021. By considering merits, writ petition was dismissed by order dated 06.07.2022. The Apex Court has confirmed the said order by making strong observations and imposing cost of Rs. 15,000/- on the petitioners.

2. Thereafter, the petitioners have filed applications Exhibit-192 and Exhibit-200. By application Exhibit-192, the petitioners/original judgment debtors claimed that deceased decree holder Sushila has sold 5 Acre portion of suit land by way of registered sale deed No. 1360/1992 dated 15.05.1992 in favour of Mubin Shaikh, Ramrao Sirsat, Shankar Sirsat and Lakhan Sirsat, resident of Neknoor, Taluka & District- Beed. Accordingly, mutation entries are effected. At the time of sale deed, suit land was in actual possession of Judgment Debtors No. 1 to 7. Thereafter, present Judgment Debtors (petitioners) have purchased 8 Anas share of Ramrao Sirsat and Lakhan Sirsat for consideration of Rs. 25,40,000/- under registered sale

deed no. 3859, dated 11.10.2021. Accordingly, their names have been mutated in the revenue record vide mutation entry no. 10202, which is sanctioned on 17.11.2021. Sale deeds in their favour have not been challenged, so also, the mutation entries. They further claimed that deceased Sushilabai has transferred her share in the suit land in favour of her son Uday and Satish and on the basis of partition their names have been mutated in the revenue record on 18.11.2011. The partitioned share which has been transferred is not excluded from the execution petition and from application Exhibit-108. The petitioners therefore claimed that the decree is not executable and the execution petition is not tenable and the decree holders are not entitled to claim possession of the suit land i.e. 30 Acre and 22 gunthas. They therefore, prayed that appropriate orders may kindly be passed before hearing application Exhibit-108.

3. The Executing Court has rejected applications Exhibit-192 and Exhibit-200 by a common order. The petitioners in this petition have impugned the order passed by the Executing Court below Exhibit-200.

4. I have given due consideration to the rival submissions of Shri. Rajendra Deshmukh, learned Senior advocate for the petitioners and Shri. G.K. Naik Thigle, learned advocate for respondent no. 1A-I.

5. It is clear that similar contentions raised by the petitioners/judgment debtors in Exhibit-166 were rejected by this Court and said order is confirmed by the Apex Court observing that:

“The facts set forth is a classic case where suit instituted in 1979 still remains to be executed! That is why it is said in our system that the second round starts when the execution start. We do believe it is a fit case of abuse of jurisdiction and wastage of judicial time.

We thus, dismiss the special leave petition with a costs of Rs. 15,000/- to be deposited with the Supreme Court Advocates On Record Association and direct the executing Court to ensure execution of the decree within a period of one month of the communication of the order, if not already executed.”

6. This is another attempt on the part of the petitioners/judgment debtors to protract the execution

proceeding, as is held by this Court in earlier petition and by the Apex Court. Though, the decree is passed in the year 1979, till date, judgment debtors are successful in avoiding execution of the same. Though, more than four decades have passed, the decree holders are yet to enjoy fruits of decree passed in their favour.

7. In view of peculiar facts of the present case, this Court is of the considered view that the Executing Court has rightly rejected the applications filed by the petitioners by considering the history of litigation, orders passed by this Court and the Apex Court. There is no factual or legal error committed by the Executing Court while passing the impugned order. There is no merit in the challenge raised by the petitioner. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]