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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5643 OF 2018

NATHABAI NIMBA PATIL (SAL
UNKHE) AND ANR

....PETITIONER

V/s.

DAGA ZULAL SALUNKHE, AND
ORS

....RESPONDENTS

Mr. Prasad Kulkarni ib Prashant D. Patil Advocate for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 11, 2022.

P.C.:

1) Petitioner, a beneficiary of Decree for partition and separate possession passed in R.C.S. No. 67/1971, received possession of her share in RD No. 16/1978. Partition Decree in the said Suit has attained finality qua execution which is sought to be re-opened vide Application under Section 47 of Code of Civil Procedure, 1908 r/w Section 85 of the Maharashtra Land Revenue Code.

2) Court below rejected the same vide order impugned dated

02/02/2016.

- 3) Perused the impugned order.
- 4) The Court has recorded satisfaction that the Petitioner has already received possession of her share in execution proceedings in relation to which, she has created third party interest.
- 5) Apart from above, the remedy invoked by the Petitioner by virtue of Application under Section 47 is rightly held to be not maintainable as execution proceedings were already concluded. What is sought to be done by the Petitioner by way of an application under Section 47 of C.P.C. is, re-opening of execution of a partition Decree which is rightly held to be not maintainable.
- 6) No case for interference in extraordinary jurisdiction is made out. Petition fails, stands rejected.

[NITIN W. SAMBRE, J.]