

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 2101 OF 2022

(Haridas s/o Deorao Borkar and another ..vs.. Smt. Parbatabai w/o Namdeo Shende and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.P. Kshirsagar, Counsel for the petitioners.

CORAM : ROHIT B. DEO, J.

DATED : 20-04-2022

The petitioners are defendants 1 and 2 in Regular Civil Suit 35/2016 which is instituted by respondent 1 herein Smt. Parbatabai Shende seeking declaration and permanent injunction qua the suit property which is described as plot admeasuring 1200 square feet situated at Bhanegaon.

2. Defendants 1 and 2 moved an application Exhibit 39, the prayer clause of which is that the suit be treated as objection in Regular Darkhast 56/2011. Defendants 1 and 2 contended that they instituted suit against the co-defendants 3 and 4 in which a decree is passed against defendants 3 and 4, and execution is pending. It is then contended that during the execution proceedings, the plaintiff encroached upon the suit property and therefore, the suit be treated as objection in the execution proceedings which arises from the suit filed by defendants 1 and 2.

3. This application is rejected by the learned trial Judge reasoning thus :

“Heard learned Advocates for both parties at considerable length. Perused the plaint in the present suit and the nature of execution proceedings and documents filed on record in present suit and Regular Darkhast and Decree in Regular Civil Suit No.2013/2001, Haridas vs. Krushna Exhibit 95, it did not disclose the number of suit property. So also, in Exhibit 1 of Regular Darkhast 56/2011 Haridas vs. Krushna also did not mention about the name and number of suit property. Therefore, considering the application, I find that, it is devoid of merits and without substance. Therefore, the citation relied upon by defendant Nos. 1 and 2 is not helpful in instant application. Parties are at liberty to file objection in execution proceeding itself or may file separate suit for the same.”

4. I see nothing wrong in the reasons recorded by the learned trial Judge. If according to defendants 1 and 2, the suit which is filed by the plaintiff, who admittedly is not a party in the earlier suit, is not maintainable for any reason, defendants 1 and 2 were free to take recourse to such remedy as is available in law. However, defendants 1 and 2 certainly cannot insist that the suit filed by the plaintiff be treated as objection in the execution proceedings filed by defendants 1 and 2.

5. The petition is dismissed.

JUDGE