

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1913 OF 2022

Alka Ganeshrao Bele and ors.

..vs..

Gopal Shamraoji Kalambe and ors.

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

Court's or Judge's orders

Shri P.D. Sharma, Advocate for the petitioners.

CORAM : ROHIT B. DEO, J.

DATED : 08/04/2022.

The petitioners claim to be the legal heirs of Mr. Ganeshrao Bele who was defendant 1(C) in Special Civil Suit 115 of 2000, which was decreed by the Civil Court vide Judgment and Decree dated 23.09.2009.

2. By the said Judgment and Decree, the suit is decreed with the direction that the defendants including Mr. Ganeshrao Bele, shall execute the sale-deed of the suit field in favour of the plaintiffs on receipt of the balance consideration.

3. The plaintiffs/decreed holders initiated execution proceeding Special Darkhast 9 of 2010, in which the Executing Court has passed an order dated 29.10.2021 directing the Nazir to execute the sale-deed of the suit property. Further, order is passed on 13.12.2021, the

operative part of the order reads thus :

“ORDER

1. An amount of Rs.62,635/- deposited by decree holders vide C-No.988 on 11.01.2010 and belonging to Morshi Seva Sahkari Society Ltd., registration no.599, shall be deducted while paying the consideration amount to judgment debtors, if demanded by them.

2. Nazir shall take necessary entry in the C-register.

3. Copy of this order be provided to Nazir for information and necessary action.”

4. According to the petitioners, they are the legal heirs of Mr. Ganeshrao Bele. The petitioners claim that in view of the provisions of Section 48(d) of the Maharashtra Co-operative Societies Act 1960 (‘the Act’), the Executing Court could not have directed the Nazir to execute the sale-deed since there was an encumbrance on the field. It is further submitted that there was no inquiry conducted and the execution is even otherwise a nullity since Mr. Ganeshrao Bele has expired on 16.05.2021, during the pendency of the execution. The further submission is that the decree holder ought to have brought on the record the legal heirs of Mr. Ganeshrao Bele, before proceeding with the execution.

5. It is admitted by the petitioners that pursuant to

the order impugned, the Nazir has already executed the sale-deed in favour of the decree holders on 27.12.2021. The petitioners contend that the said sale-deed is illegal and one of the prayer in the petition is that the sale-deed be set aside.

6. This petition, in my considered view, is absolutely misconceived.

7. Lest there is any prejudice caused to the petitioner, I am consciously refraining from making any observation. Suffice it to say, that the petitioners have appropriate remedies to assail the orders passed in the execution.

8. Leaving all contentions open for the petitioners to raise before the appropriate forum, the petition is dismissed.

JUDGE

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