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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1437 OF 2021

Bhagwan Namdeo Wagh and Others

PETITIONERS

VERSUS

Shamrao Laxman Wagh

RESPONDENT

.....

Mr. Anant Devakate, Advocate for the petitioners

Mr. P. N. Kutti, AGP for respondent - State

Mr. S. M. Kulkarni, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JUNE, 2023

ORDER :

1. Order dated 18th November, 2019 passed by learned Joint Civil Judge, Junior Division, Bhokardan below Exhibit-98 in Regular Darkhast No.13 of 2008 is challenged by the petitioners, by filing the present petition under Article 227 of the Constitution of India.

2. Today, this Court has decided writ petition No. 6942 of 2020 filed by the respondent challenging order passed below Exhibit-107 in RD No. 13 of 2008, by recording elaborate reasons. Exhibit-107 was filed by the respondent – decree holder for appointment of Deputy Superintendent of Land Records as

Court Commissioner for fixing the boundaries of the suit properties, which is rejected by the Joint Civil Judge, Junior Division, Bhokardan.

3. Judgment Debtors in the Regular Darkhast have filed application Exhibit-98 with a prayer that the decree sought to be executed in the execution petition, is in-executable and, therefore, the Execution Petition may be dismissed.

4. After hearing the parties, the Executing Court partly allowed the said application and held that the decree cannot be executed against legal heirs of original defendant No.1 – deceased Balu Laxman Wagh. It is further held that the decree also cannot be executed against the other legal heirs of defendnat No. 2 - deceased Kisan Laxman Wagh, except his legal heirs – petitioners, Vithoba Kisan Wagh and Bajirao Kisan Wagh.

5. Perusal of the application Exhibit-98 shows that no such averment, in respect of non-executability of the decree against the present petitioners, is mentioned in the said application. In fact, all the submissions in the said application pertain to the measurement of the suit property and as per the Court Commissioner's report, since the Court Commissioner was unable to fix the boundaries and measure the suit properties, it

is contended that the decree is in-executable.

6. The Executing Court, while considering the said application, also took into consideration the previous applications Exhibits-61 and 68, filed by the petitioners and order passed by this Court in Writ Petition No. 3529 of 2016. It is held that Second Appeal No. 278 of 1987 abated against defendant No.1 Balu Laxman Wagh, hence, the decree cannot be executed against his legal heirs. It is further held that though the second appeal is also abated against original defendant No.2 Kisan Laxman Wagh, however, since his two sons, namely Vithoba Laxman Wagh and Bajirao Laxman Wagh were parties in the said second appeal, the decree can be executed against them. Thus, the Executing Court has partly allowed the application Exhibit-98.

7. On going through the record and for the reasons stated in the order passed in Writ Petition No. 6942 of 2020, this Court is of the opinion that there is no illegality or perversity in the order impugned in the present petition. The decree passed in Second Appeal is dated 8th July, 2008 and till date, the decree holder is deprived of the fruits of the decree. In that view of the matter also, this Court is not inclined to interfere in the order impugned in the present petition. The petitioner has failed to make out a

case to exercise extraordinary writ jurisdiction. The Writ Petition being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

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