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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1985 OF 2022

Vilas Dongarlal Jaiswal

PETITIONER

VERSUS

Lilabai Dongarlal Jaiswal (Died) LRs and Others RESPONDENTS

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Mr. Anand P. Bhandari, Advocate for the petitioner

Mr. Vinod Prakash Patil, Advocate for respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th MARCH, 2023

ORDER :

1. The petitioner is aggrieved by order dated 23rd December, 2021 passed by learned Civil Judge, Junior Division, Erandol below Exhibit-1 in Regular Darkhast No. 2 of 2018, thereby holding that the Darkhast filed by the petitioner is not tenable and the same is disposed of for want of jurisdiction.

2. Facts, which are not in dispute, are that, the petitioner is a decree holder and respondents No.2 and 3 are non decree holders in RD No. 2 of 2018. The decree was passed by the Trial Court, in favour of the petitioner – original plaintiff, to recover his 8/35th share in the suit properties. The suit properties were directed to be partitioned through Collector and household

properties were directed to be partitioned through Court Commissioner. Regular Darkhast is filed for execution of the decree, wherein, from time to time, various orders are passed and some of the suit properties were directed to be auctioned.

3. During the execution, the Sub Registrar, Erandol, was directed to submit valuation of properties, under decree, at serial No. 1 to 11 in Annexure "A" to the suit, on the basis of ready reckoner. The Sub Registrar, accordingly submitted valuation report at Exhibit-65 on 31st August, 2019.

4. After considering the valuation report, the Executing Court, on 7th September, 2019, passed following order -

".... Report does not show value and rate of one property CTS No. 3535. Hence, it is incomplete in respect of one property. Further, apparently without going into merit of report, value of property under decree exceed Rs. Five Lakh. Hence, in view of report, Decree holder to take steps and parties to argue on point of jurisdiction in view of section 38, 39 of CPC."

5. Accordingly, after hearing the parties, the Executing Court passed order on 13th November, 2019, thereby holding that, in view of section 37 CPC, where the court of first instance has ceased to exist or to have jurisdiction to execute it, the Court, which if the suit wherein the decree was passed was instituted at the time of making the application for execution of the decree,

would have jurisdiction to try such suit. Now the jurisdiction of the Executing Court is up to Rs.5 lakh for pecuniary purpose and, therefore, the Court of Senior Division would cease to have jurisdiction and Executing Court would be deemed to be the court which passed decree as per section 37 of the CPC. Therefore, transfer certificate under section 39 of the CPC would not be required and the Executing Court would have jurisdiction to proceed with execution petition.

6. The matter, thereafter proceeded further and by the impugned order, the Executing Court has held that it has no jurisdiction to entertain execution petition, which is not tenable according to it. Hence, the present petition.

7. Heard learned advocate for the petitioner and the learned advocate for the respondents. Perused the grounds raised in the writ petition and the documents annexed with the petition and the impugned order.

8. It is opposite to consider relevant provision of section 37.

“ 37. Definition of Court which passed a decree - The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-

(a)

(b)

[Explanation- The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.]

9. Plain reading of above provision makes it clear that in view of amendment carried out in the jurisdiction of civil courts in Maharashtra Civil Courts Act, 1869 to section 24 of the Act, which has come into force in the year 2011, the jurisdiction of the Civil Judge (Junior Division) is enhanced to Rs.5 lakh by Maharashtra Act 44 of 2011. In this view of the matter, the Executing Court has jurisdiction to entertain the Execution Petition and it was rightly held so by the Executing Court vide order passed below Exhibit-1 on 13th November. 2019.

10. Admittedly, the said order has attained finality and is not challenged by either of the parties. Therefore, the Executing Court had no occasion to review the order passed on 13th November, 2019 and to pass the impugned order. The Executing

Court has misread and misconstrued the provisions of section 37 of the Civil Procedure Code and misdirected itself in passing the impugned order, which is not sustainable in law and facts of the case and in view of aforesaid legal provision.

11. In the result, following order

ORDER

- A. Writ petition is allowed.
- B. Impugned order dated 23rd December, 2021 passed by learned Civil Judge, Junior Division, Erandol below Exhibit-1 in Regular Darkhast No. 2 of 2018, is hereby quashed and set aside.
- C. The Executing Court is directed to expeditiously dispose of the Execution Petition.

**[NITIN B. SURYAWANSHI]
JUDGE**