

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

26 WRIT PETITION NO.2046 OF 2023

**PRAKASH TUKARAM MULE DIED THROUGH HIS LRS PRASHANT
PRAKASH MULE
VERSUS
INDRAVANIBAI NARAYAN MULE DIED THROUGH HER LRS
BABURAO NARAYAN MULE DIED LRS ARUN BABURAO MULE**

...
Advocate for Petitioner : Mr.Chavan Prasanna Shankarrao
Advocate for Respondent Nos. 1 to 9 : Mr. V.v. Ingale
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 22.02.2023.

PER COURT :

1. Heard.
2. By this petition, the challenge is to the order dated 17.08.2019 passed below Exh. 108 and the order dated 02.01.2023 passed below Exh. 174 by the Executing Court in R.D. No. 6 of 1992.
3. Petitioners and the respondent Nos. 1 to 9 are the legal representatives of one Tukaram and Baburao respectively who were the sons Indravanibai Narayan Mule who had instituted RCS No. 164 of 1979 for possession of the suit property and for declaration of ownership of the suit property i.e. the suit house bearing Municipal House No. 257/B/258-B. On 29.04.1987, the suit was decreed and during the second appeal pending before this Court, Indravanibai

expired and Tukaram and Baburao came to be impleaded as her legal representatives. The second appeal was dismissed by this Court by order dated 21.10.1992 and Darkhast came to be filed by the legal representatives of Baburao bearing Darkhast No. 6 of 1992. During the pendency of the Darkhast, Baburao expired and his legal representatives continued with the Darkhast. As the legal representatives of Tukaram were under the apprehension that the legal representatives of Baburao will not hand over the possession of their half share in the suit property an application came to be filed for being impleaded as party to the Darkhast. The proceedings came to be rejected as against which petition was filed before this Court bearing Writ Petition No. 1480 of 2003. By order dated 13.12.2018 the petition came to be allowed subject to payment of costs of Rs. 15,000/- to be paid to the Government Medical College and Hospital, Aurangabad on or before 14.01.2019 directing the petitioners to be brought on record on or before 31.01.2019. It was also directed that the Darkhast to be decided on or before 30.06.2019. Although the cost was deposited but the receipt evidencing payment of cost could not be produced before the executing Court and also applications for bringing the legal representatives on record could not have filed on or before 31.01.2019. By the application the petitioners prayed for condonation of delay and permission for bringing on record the legal representatives of Tukaram which came to be rejected by the order

dated 17.08.2019. It is this order which is impugned in the present proceedings.

4. In the mean time, before the executing Court an undertaking was given by the legal representatives of Baburao that half share would be given to the petitioner who are the legal representatives of Tukaram. On an application for issuance of possession warrant an order was passed dated 15.10.2019, wherein it was specifically recorded that the undertaking and the affidavit filed on record by the Decree Holder shall be the part of the record and the proceedings. Subsequently, an application came to be filed by the Decree holder for appointment of Court Commissioner to hand over the half share to the Decree Holder. It was also submitted before the executing Court that the dispute is settled between the Decree Holder and the Judgment Debtor and half share is to be handed over to the Decree Holder, which came to be allowed by the order dated 02.01.2023 and the Court Commissioner came to be appointed to hand over half share portion towards southern side of the above mentioned house to the Decree Holder.

5. Learned counsel for the petitioners submits that after having accepted that the petitioners have half share in the suit property and an affidavit/undertaking filed before the Executing

Court, respondents herein are attempting to deprive the petitioners of their rightful share in the property and to that effect compromise has been entered into between the Decree Holder and the Judgment Debtor. It is further submitted that pursuant to the order of this Court dated 13.12.2018, the amount of cost was deposited which is evidenced in the form of receipt annexed to page No. 76 of the petition and there was delay of six months for producing the receipt and bringing on record the legal representatives which has been rejected erroneously.

6. Per contra, the learned counsel for the respondent submits that it is not their intention to deprive the petitioners of their rightful half share in the property and by the application below Exh. 174, respondent Nos. 1 to 9 are only claiming their half share in the suit property.

7. Considered the submissions.

8. It is not in dispute that the petitioners herein have half share in the suit property pursuant to the decree of the year 1987. By the order of this Court dated 13.12.2018 the petitioners were permitted to be brought on record on payment of costs of Rs. 15,000/- which in fact had been paid by the petitioners, however,

there was a delay of six months in preferring the application for bringing on record the legal heirs of Tukaram. The executing Court considering that the matter was time bound by this Court did not permit the petitioners herein to be brought on record and refused to condone the delay. The executing Court did not accept the explanation tendered by the petitioners that the counsel for the petitioners due to his ill health has stopped his practice and as such, there was delay in bringing the legal representatives of Tukaram i.e. petitioners on record.

9. Considering that the amount of cost directed by this Court was paid within the time limit and only delay had been occasioned due to ill health of the counsel for the petitioners, it cannot be said that the explanation was not satisfactory. It is in the interest of the Petitioners to be added as party and nothing was to be gained by delaying the proceedings. As such, in my opinion, the impugned order dated 17.08.2019 is required to be quashed and set aside. It needs to be noted that failure to bring the petitioners on record would result in depriving the petitioners of their rightful half share in the suit property. The decree is of the year 1974 and the parties are still waiting to reap the benefits of the decree.

10. As regards the order dated 02.01.2023 passed below Exh.

174 is concerned, the compromise entered into between respondent Nos. 1 to 9 and the Judgment Debtors is collusive to say the least. By the alleged compromise, respondent Nos. 1 to 9 cannot be permitted to give away the rightful share of the petitioners to the Judgment Debtor. Although the learned counsel for respondent Nos. 1 to 9 submits that they are only seeking half share in their property, on perusal of the order dated 02.01.2023 it is clear that the Judgment Debtor will be retaining the half share in the property which rightfully belongs to the Petitioners as half share has been given to respondent Nos. 1 to 9. Such collusive compromise terms cannot be permitted. As such, the impugned order dated 02.01.2023 is hereby quashed and set aside.

11. As the order dated 17.08.2019 is quashed and set aside necessary steps to be taken by the petitioner for being brought on record in RD No. 6 of 1992. The executing Court is directed to decide the RD No. 6 of 1992 expeditiously and in any event before the expiry of period of six months.

12. Writ Petition stands allowed in the above terms.

**(SHARMILA U. DESHMUKH)
JUDGE**

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