

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

CIVIL REVISION APPLICATION NO. 26 OF 2020

**GAFARKHA S/O YAKUBKHAN GOLANDAJ AND OTHER
VERSUS
LALBEE W/O INAYAT KHAN (DIED) THR. LR'S SAMIULLA
KHAN S/O INAYAT KHAN (DIED) THR. LR'S AND OTHERS**

Mr. G. R. Syed, Advocate for the applicants

Mrs. A. N. Ansari, Advocate for respondent Nos. 1-A to 1-H, 2 and 3

Mr. P. V. Gole, Advocate h/f Mr. V. D. Gunale, Advocate for respondent
No. 11

CORAM : R. M. JOSHI, J.

RESERVED ON : 28/04/2023

PRONOUNCED ON : 13/06/2023

P.C. :-

1. The applicants are original judgment debtors No. 2-B to 2-F and 4/1 to 4/6 in Regular Darkhast No.58/2018 (Old No. 12/2013) and being aggrieved by the order dated 04/01/2020 passed below Exh. 1 in the darkhast by the execution Court present revision is preferred under Section 115 of the Code of Civil Procedure (CPC).

2. Learned counsel for the applicants states that the execution Court has failed to consider the relevant peculiar facts and circumstances of the case and hence the impugned order becomes unjustifiable. It is contended that RCS No. 136/1977 came to be filed

for partition and separate possession of the lands bearing survey Nos. 59 and 60 situated at village Belsangvi, Taq. Udgir, Dist. Latur. By judgment and decree dated 31/12/1985 survey Nos. 59 and 60 was directed to be partitioned and it was held that plaintiff Nos. 1 and 2 are entitled to receive 19/24th share in the suit property. It is further directed that plaintiff No.1 to hand over the possession to plaintiff No.3 as she had alienated her undivided share in favour this plaintiff. He further claims that as a result of the said order it is plaintiff No. 3 who was entitled to receive the share and not plaintiff No. 1. It is pointed out that plaintiff No.3 has transferred her share in favour of present applicants and therefore there is no reason for justification for plaintiff No.1 or her LR's to file execution proceeding. It is contention that since the plaintiff No.1 was not entitled to receive only share now but technically she had to receive share and make it over to plaintiff No. 3, it becomes academic that the said share is first handed over to her and in fact applicants are entitled receive it directly.

3. Learned counsel for contesting respondents i.e. the legal heirs of plaintiff No.1 opposed the said contention by pointing out that the execution Court cannot go behind the order and that the impugned judgment and decree whereby it is directed that half share

of the suit property be handed over to the plaintiff No.1 has not been disturbed by any Court. According to her submission, the execution Court has no right to consider as to whether there was any transfer of property in between parties to suit but what was expected to consider is as to whether the plaintiff No.1 is entitled to receive share in suit properties and for that purpose she is in a position to file execution proceeding.

4. This application is filed under Section 115 of CPC and as per the said provision Revisional Court has extremely limited jurisdiction to ascertain whether the order impugned is passed by the Court in excessive exercise or non exercise of its jurisdiction. The Court can not sit as an Appellate Court to decide validity of such order. Keeping in mind scope of the relevant provision present application is decided.

5. There is no dispute about the fact that R.C.S. No. 136/1977 came to be filed for partition and separate possession of the suit properties. The suit was decreed and plaintiff Nos. 1 and 2 were granted 19/24th share for both in the suit land. After determining the shares of plaintiff Nos. 1 and 2 it was further directed that after delivery of possession of plaintiff No. 1 she was

directed to hand over her share to plaintiff No.3. The said decree has attained finality. Since the properties are agricultural properties the decree is to be executed through Collector.

6. The contention of the applicants about a compromise being entered into with plaintiff Nos. 2 and 3 and therefore decree cannot be put to execution by plaintiff No.1 or her heirs cannot be accepted. There is no dispute about the fact that plaintiff No.1 or her LR's were not party to any such compromise arrived at between other parties to the suit. It cannot be denied that the execution Court is bound by the decree put before him for the execution and that the Court cannot go behind the decree. Once the said legal possession is accepted then it is not open for the execution Court to refuse to entertain the execution initiated by plaintiff No.1 or her legal representatives as per the judgment and decree they are entitled to get possession first. It is a consequential issue between plaintiff Nos. 1 and 3 with regard to the further handing over of the possession of such share. No competent court has modified the decree passed in RCS No. 136/1977 and that the decree which has attained finality needs to be executed in the same manner as directed. Thus, at this stage there was no reason or justification for Executing Court not to entertain the application filed by the LR's of plaintiff No.1. In the

result this Court find no perversity in the passing of the impugned order by the execution Court. Hence the revision application stands dismissed.

(R. M. JOSHI, J.)

LATER ON

1. After pronouncement of judgment, learned counsel for the applicant has requested for continuation of the stay to handing over of the possession of the suit property by the applicant to the respondent Nos. 1(a) to 1(h), 2 and 3 for the period of two months.
2. None for the contesting respondents.
3. In the interest of justice, the stay order dated 18th February, 2022 to continue for the period of six weeks.

(R. M. JOSHI, J.)

ssp