

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5317 OF 2023

Ashok Dasa Rankhamb
Died through L.Rs.
Smt. Sangeeta W/o Ashok Rankhamb
and others Petitioners

Versus

Shivaji S/o Dasa Rankhamb Respondent

.....
Mr. Mahendra B. Kolpe, Advocate for Petitioners
Mr. Y.P. Jadhav, Advocate for Respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th OCTOBER, 2023

ORDER :

1. Leave to correct the prayer clause.
2. By this petition, filed under Article 227 of the Constitution of India, petitioner has challenged the order passed by learned 2nd Joint Civil Judge, Senior Division, Osmanabad, below Exhibit-36 and Exhibit 1 and 15 in Regular Darkhast No.30 of 2014.
3. Petitioner and his mother had filed Regular Civil Suit No.35 of 1986 against father Dasa, respondent - Shivaji and his mother Hirabai, for partition and separate possession of suit property. Said suit was compromised, on the basis of

compromise terms (Exhibit-124). Compromise decree accordingly is passed, thereby granting 2 Hectar 92 R out of Gut No.24 , and 1 Acre on southern side out of Gut No.146 to the share of petitioner - Ashok. Respondent - Shivaji was given entire southern portion of land Gut No.146, admeasuring 4 Acre 21 Gunthas. As per the compromise terms, respondent - Shivaji was to withdraw Regular Darkhast No.34 of 1996 filed by him for execution of decree passed in Regular Civil Suit No.256 of 1981 filed by him for partition. In the said suit, decree was passed against father Dasa. As per the said decree, Shivaji and his mother Hirabai were held entitled for 1/3rd share each in the suit property, and partition was directed.

4. Respondents, thereafter, filed Regular Darkhast No.30 of 2014 for execution of judgment and decree passed in Regular Civil Suit No. 256 of 1981. Petitioners filed application Exhibit-36, under Order I Rule 10 of the Code of Civil Procedure in the Execution Petition, and claimed to be impleaded as party to the execution proceedings. This application is rejected by the Executing Court, holding that the provisions of Order I Rule 10 of the Code of Civil Procedure are not applicable to the execution proceeding. It is not clear as to

how petitioners have incurred their share in the suit property as they are claiming. No documents were filed by them. They have received suit property by compromise.

5. By order dated 10/03/2021, Executing Court has forwarded the precept to the Collector under Section 54 of the Code of Civil Procedure for execution of decree in Regular Civil Suit No.256 of 1981. Both these orders are impugned in the present petition.

6. Heard learned advocate for petitioners and learned advocate for respondent. Perused the writ petition memo, annexures thereto, and impugned orders.

7. There appears serious dispute between parties as petitioners claimed that decree passed in Regular Civil Suit No.256 of 1981 has merged in compromise decree passed in Regular Civil Suit No.35 of 1986. Admittedly, respondent is party to the said compromise decree. The compromise decree is acted upon, and accordingly respondent has withdrawn Regular Darkhast No.34 of 1996, filed by him for execution of decree in Regular Civil Suit No.256 of 1981. In this view of the matter, Executing Court ought to have allowed application Exhibit-36 filed by petitioner so as to enable to point out to the

Executing Court the fact of compromise and withdrawal of earlier Regular Darkhast No.34 of 1996. However, by rejecting the said application, Executing Court has denied the said opportunity to petitioners and without taking into consideration the fact of compromise, Executing Court has forwarded the decree passed in Regular Civil Suit No. 256 of 1981 to Collector for effecting partition. In fact, petitioners had raised valid grounds for their impleadment in the Execution Petition. Executing Court has failed to consider them in proper perspective. The impugned order, therefore, liable to be quashed and set aside.

8. In fact, petitioners ought to have filed application in Execution Petition under Order XXI Rule 97 of the Code of Civil Procedure.

9. Be that as it may, the impugned order since is unsustainable in law and fact, the same is hereby quashed and set aside.

10. Petitioners are at liberty to file application under Order XXI Rule 97 of Code of the Civil Procedure raising an objection in Execution Petition.

11. In view of the aforestated reasons, the impugned order passed below Exhibit 1 and 15 is also quashed and set aside.

12. It is made clear that, as it is claimed by respondent that he has sown Soybean crop in Gut No.24, he would be entitled to harvest the said crop for the present without prejudice to the rights and contentions of petitioners.

13. Needless to state that observations in this order shall not influence the Executing Court, while considering the objection raised by petitioners under Order XXI Rule 97 of Code of Civil Procedure.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane