

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

WRIT PETITION NO.5531 OF 2022

**MANMATHAPPA HARIBHAU PIMPLE AND ANOTHER
VERSUS
SANJAYSING SHIVPRATAPSING HAJARI AND ANOTHER**

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Advocate for Petitioners : Mr. Mohit R. Deshmukh
Advocate for Respondent No.1 : Mr. Prabhakar N. Nagargoje

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 12th JUNE, 2023

PER COURT :

1. By this petition, filed under Article 227 of the Constitution of India, petitioners/judgment debtors challenge orders dated 06/05/2022, passed by the learned Joint Civil Judge, Junior Division, Ambajogai, below Exhibits- 1 and 69, in Regular Darkhast No.14/2010.
2. Respondent No.1/deed holder filed Regular Civil Suit No.41/2007 against his step-mother Deokabai w/o Shivpratapsing Hazari (respondent No.2 herein) for declaration of his right of preemption in respect of the suit land and for perpetual injunction, restraining the transfer of suit land in favour of stranger. The suit was decreed on 28/07/2008. After the decree was passed, Deokabai sold the suit land in favour of petitioners by a sale deed dated 17/04/2009, for consideration of Rs.10,25,000/-.

3. Respondent No.1/deGREE holder, thereafter, filed Regular Darkhast No.14/2010 for execution of decree with prayer to determine the reasonable market value of the suit land and prayed for execution of the registered sale deed and possession of the suit land. Notice of the execution proceedings was issued to the petitioners, but petitioners did not appear in response to the notice issued to them under Order 21 Rule 34 of the Code of Civil Procedure. Respondent No.1/deGREE holder, thereafter filed valuation report of the suit land at Exhibit-56-D, in which valuation of the suit land as per Ready Reckoner, is shown as Rs.7,37,100/-. Respondent No.1/deGREE holder also filed draft sale deed at Exhibit-73. By order dated 06/05/2022 passed below Exhibit-1, Executing Court accepted the valuation as well as draft sale deed and directed the Superintendent of Civil Court, Senior Division, Ambajogai, to execute sale deed of the suit land in favour of respondent No.1/deGREE holder, within 10 days, along with share in common well. It is further directed to send original draft of sale deed Exhibit-73 to the Sub Registrar, Ambajogai, for execution of the sale deed and Sub Registrar was directed to accept the draft with modifications, if any, like date, name and boundaries.

By filing application Exhibit-69 judgment debtor No.2/ petitioner No.1 requested Executing Court to abate the execution proceedings as judgment debtor No.1 expired on 18/09/2019 and

her legal representatives are not taken on record within 90 days. Hence, the right to sue or to have the decree executed does not survive. This application is rejected by the Executing Court holding that the matter is for execution of sale deed and no relief is claimed against deceased Deokabai. Also, the suit property is in possession of judgment debtor Nos.2 and 3. Both these orders are challenged in the present petition.

4. Heard learned advocate for petitioners and learned advocate for respondent No.1. Perused the writ petition memo, annexures thereto and the impugned orders.

5. Learned advocate for petitioners assailed the impugned orders by relying on Order 21 Rule 34(6) as well as Rule 14(a)(b) of Order 20. According to him, conjoint reading of these provisions mandates executing Court to determine market value, which is not done in the present case. He further submits that draft sale deed was not served on him and the petitioners' objections on draft sale deed were not called upon. By pointing out Exhibit-56-D, he submits that market value presented by the decree holder before executing Court is wrong and it is of the Jirayat land and not of the irrigated land. Further the said valuation is of a smaller portion i.e. 0.945 R land, whereas the land in question is 1 H 81 R. Executing Court has, therefore, erred in placing implicit reliance on the

valuation submitted by the decree holder. Further submission is that, in the year 2009 itself petitioners purchased land in question from respondent No.2 deceased Deokabai for consideration of Rs.10,25,000/-. Ignoring this aspect the executing Court has executed sale deed in favour of respondent No.1 decree holder for a meager consideration of Rs.7,78,300/-. By relying on ***Rajbir Vs. Suraj Bhan and Another, 2022 ALL SCR 732***, he submits that for accepting draft sale deed without objections being called and considered, the impugned orders are unsustainable and hence, are liable to be quashed and set aside. Hence, the writ petition deserves to be allowed.

6. Per contra, learned advocate for respondent No.1 decree holder supported the impugned orders. He submits that notices under Order 21 Rule 34, were issued to all judgment debtors and report of service is rendered by the executing Court in the impugned order below Exhibit-1. He further submits that it is observed by the executing Court that the draft below Exhibit-53 dated 27/08/2018 is received by the judgment debtors on 04/05/2022 and this fact shows negligence and prolonging practice. He further points out the observation of executing Court that matter is 12 years old and sufficient opportunities are granted to the judgment debtors. In these facts, according to him, executing Court

was justified in passing the impugned orders.

7. Admittedly, the registered sale deed is executed in favour of respondent No.1/decree holder pursuant to the order dated 06/05/2022 passed below Exhibit-1. Therefore, the challenge raised by the petitioners to the order passed below Exhibit-1 does not survive.

8. However, there appears substance in the contention of learned advocate for petitioners that Executing Court has failed to take into consideration proper valuation of the suit land. Valuation at Exhibit-56-D placed on record by the decree holder is in respect of Jirayat land and the area is shown as 0.945 R and valuation is arrived at Rs.7,37,100/-. This valuation is blindly accepted by the Executing Court ignoring the fact that land in question is admeasuring 1 H 81 R and this land appears to be irrigated land as per the recital in sale deed dated 17/04/2009, executed in favour of petitioners by the deceased Deokabai, for consideration of Rs.10,25,000/-. The Executing Court did not consider these aspects at the time of accepting valuation report submitted by respondent No.1/decree holder.

9. There is no merit in the submission of petitioners that objections of petitioners were not called on the draft sale deed. In paragraph 5 of the impugned order passed below Exhibit-1, the

Executing Court has observed that notices under Order 21 Rule 34, were issued to all judgment debtors vide Exhibit-64, on 18/09/2019 and the report of service is at Exhibit-67. It is pertinent to note that draft sale deed Exhibit-73 is filed in January, 2019. Therefore, it is clear that the notices Exhibit-64 issued on 18/09/2019, were in respect of sale deed at Exhibit-73.

10. In *Rajbir* (supra), the Hon'ble Apex Court in the facts of that case has held that, decree itself is inexecutable and it was found meritless, but that itself would not absolve Court of its duty to proceed with the matter of considering draft sale deed and objections thereto under the provisions of Order 21, Rule 34.

11. In that case, the draft sale deed was not forwarded to the judgment debtors for calling their objections and therefore, the Hon'ble Apex Court allowed the appeal and set aside the impugned order by directing the executing Court to hand over the copy of draft sale deed, within a period of two weeks from the date of production of copy of that judgment before the executing Court. The appellant therein was granted liberty to file objections to the draft sale deed and after hearing the parties, the Executing Court was directed to take decision on the objections. In the meanwhile, the sale deed was directed to be kept in abeyance till a decision is taken by the executing Court.

12. Such are not the facts of the present case. In the case in hand, notices were already issued to the judgment debtors, pursuant to the filing of draft sale deed at Exhibit-73 and therefore, the said ruling would not help the case of petitioners.

13. The Executing Court has rightly observed that execution petition is 12 years old and in spite of sufficient opportunities granted to the judgment debtors, they appear to be only interested in prolonging the matter. Executing Court, therefore, is justified in passing the impugned order, thereby directing execution of sale deed in favour of decree holder. No fault can be found with the orders impugned in present petition, except the fact that valuation submitted by the decree holder is wrongly accepted by the Executing Court. In the result, following order:-

ORDER

- (I) Challenge raised by the petitioners to the orders passed below Exhibits- 1 and 69 is negatived.
- (II) The Executing Court is directed to re-determine market value of the suit land by making necessary inquiry in that behalf.
- (III) If it is found that market value is more than the value accepted by the Executing Court, the decree holder shall be directed to deposit the amount of its deficit stamp

duty accordingly.

- (IV) In case after inquiry such amount is deposited, the judgment debtors are entitled to withdraw the same.
- (V) This exercise shall be conducted by the executing Court within a period of three months from the date of receipt of writ of this order.

Writ petition is accordingly disposed of.

(NITIN B. SURYAWANSHI, J.)