

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

48 WRIT PETITION NO.7691 OF 2022

PRATAP SINGH HANSRAM SINGH CHOVHAN DIED LRS
CHANDRAMOHANSINGH PRATAPSINGH CHAVAN
VERSUS

VASANTRAO PRALHADRAO MULAVEKAR DIED LRS
CHANDRAKANT LAXMIKANT MULAVEKAR AND OTHERS

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Advocate for Petitioner : Mr. Pradip Narayanrao Sonpethkar

Advocate for Respondent Nos.1 to 7 : Mr. M.K. Deshpande

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 11-01-2023

PER COURT :

1. The petitioner is aggrieved by the order dated 07.06.2022 passed by 3rd Jt. Civil Judge Junior Division, Parbhani below Exh.68 in Reg. Darkhast No.39 of 2011 whereby the petitioner's application for dismissal of the darkhast came to be rejected.

2. Heard the learned counsel appearing for the parties.

3. The admitted position is that the petitioner herein the judgment debtor has suffered the decree for eviction which was put in execution. During the execution proceedings, the original judgment debtor and the decree holder expired. By the order dated 17.01.2020 the alleged legal heirs of the deceased decree holder -

Vasantrao came to be brought on record. Subsequently the alleged legal heirs of the deceased decree holder Vasantrao filed application under Section 372 of the Indian Succession Act and also proceedings under Section 2 of Bombay Regulation Act for issuance of Succession Certificate and Legal Heirship Certificate respectively, which came to be rejected.

4. In view of the said position, the judgment debtor filed an application which came to be rejected by the Executing Court only on the ground that the order dated 17.01.2020 bringing the respondents on record as legal heirs has not been challenged.

5. Perused the papers with the assistance of the learned counsel appearing for the parties. In my opinion, the application could not have been filed by the judgment debtor for dismissing the darkhast on the ground that there are no legal heirs of the deceased decree holder on record. Admittedly, there are Class-II heirs of the deceased decree holder and there appears to be *inter se* dispute which is apparent from the orders passed in the proceedings under the Indian Succession Act and Bombay Regulation Act. It has to be determined as to who are the legal representatives of the deceased decree holder.

6. The learned counsel for the respondents submits that the orders refusing the Succession Certificate and Legal Heirship Certificate are the subject matter of appeals.

7. In my view, unless the legal representatives of the deceased decree holder are ascertained and the appeals filed by the respondents as against the dismissal of the proceedings under the Indian Succession Act and Bombay Regulation Act are adjudicated, the execution proceedings are required to be kept in abeyance. Hence the following order.

ORDER

(i) Regular Darkhast No.39 of 2011 pending before 3rd Jt. Civil Judge Junior Division, Parbhani be kept in abeyance until the Appeal Nos.1 of 2021 and 2 of 2021 pending before the District Court, Parbhani are finally decided. Upon the Appeal Nos.1 of 2021 and 2 of 2021 being finally decided, the respondents are at liberty to move the execution proceedings.

. The writ petition is allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)