

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8484 OF 2022

Zaitunbee Shaikhlal Dead Through Lrs
Khatoonbee Shaikh Amir Died Through
Lrs And Another

Petitioners

Versus

Shaikh Chand Shaikh Ahmed Dead
Through Lrs Shaikh Pashu Sk. Chand
Died And Others

Respondents

Mr. N.S. Muthiyan, Advocate for the petitioners.
Mr. V.P. Latange, Advocate for respondent No. 1(i) to (vii) and 2
to 5.

.....
[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th JULY, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned Civil Judge, Senior Division, Aurangabad, below Exhibit-76 in Regular Darkhast No. 119/1997, thereby allowing the application filed by the decree holders and appointing Court Commissioner, T.I.L.R., Aurangabad, for measurement of suit property, house No. 4-19-38 (New 2595) old City Survey No. 12966 and for allocation of the suit property.

2. Heard the learned advocate for the petitioners and learned advocate for the respondents. Perused the memo of writ

petition, annexures thereto and the impugned order.

3. It appears from the record that the decree of the year 1997 is still not executed due to the intervention of the present petitioners who claim to be legal heirs of Zaitunbee Shaikhhlal against whom this Court passed judgment and decree in Second Appeal No. 131/1994 on 25.08.1994. This Court has made following observations;

"(4) Both the Courts below have recorded a concurrent finding that defendant Shaikh Chand is the owner of the suit property and both the Courts below have recorded a concurrent finding that the plaintiff is in possession of the portion described in the operative order of the trial Court i.e. one room and one tin shed towards extreme southern side of house number 4-19-38 (new), 2395 (old) bearing CTS No. 12966 situated at Laxman Chawadi, Outside Jaffar-gate, Aurangabad. There is an admission on record given by the defendant that he will not disturb the possession of the plaintiff over this portion during her lifetime. Appellant/defendant apprehends that because of the decree passed by the appellate Court, it is likely that even after the lifetime of plaintiff Zaitunbee, defendant may be prevented from taking possession of these premises by somebody claiming through Zaitunbee as her heir.

(5) Since Zaitunbee had no title to the suit property and is allowed to occupy the property only as licensee of the defendant, it is clarified that the decreed passed shall be operative till the

lifetime of Zaitunbee only and thereafter defendant will be entitled to get back the possession by due process of law. Plaintiff/respondent Zaitunbee is restrained from creating any third party interest or transferring the suit property to any other person. With these observations and the modification in the appellate Court decree, Second Appeal is disposed of. Decree be drawn according to the above observations. There shall be no order as to costs of this appeal."

4. In the light of observations of this Court in para 5 it is clear that Zaitunbee had no title to the suit property and she was allowed to occupy the property only as licensee of the defendants and it was clarified that the decree passed shall be operative till lifetime of Zaitunbee only and thereafter the defendant will be entitled to get back possession by due process of law. In view of these observations present petitioners who claim to be legal heirs of Zaitunbee have no say in the matter.

5. Admittedly, decree sought to be executed is of the extreme south side of the suit property and the petitioners claim to be in possession of northern side of the suit property. In that view of the matter also the petitioners have no right to challenge the order of appointment of Court Commissioner by the Executing Court. There is no illegality or perversity in the order

impugned in the present petition. No case is made out by the petitioners to warrant interference in the extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]