

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.899 OF 2023

Sambhaji Shivappa Dadage and Another PETITIONERS

VERSUS

Mahadabai Gunwantrao Patil and Others RESPONDENTS

.....

Mr. Chandrakant D. Biradar, Advocate for the petitioners
Mr. B. A Darak, Advocate for respondent No.6

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JULY, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioners challenge the judgment and order passed by the learned Civil Judge, Senior Division, Udgir, below Exhibits-1, 59 and 60 in Regular Darkhast No. 56 of 1980 (New RD No. 6 of 2018).

2. Regular Civil Suit No. 45 of 1969 was dismissed by the Trial Court. Thereafter, Regular Civil Appeal No. 134 of 1970 was filed, challenging judgment and decree of the Trial Court. The Appellate Court, on 1st August, 1972 has allowed the appeal and passed the decree of partition. Thereafter, the decree holders

filed execution proceedings.

3. In the execution proceedings, when precepts were to be forwarded to the Collector, the petitioners raised objection that the partition and delivery of possession of land survey No. 257, block No. 1220 is not effected and its original record is not available. The Executing Court negatived the objection and passed following order :

- “1. Precepts be sent back to collector for effecting the partition by considering the questions / queries of this Court like, how much land was decided to be given to the decree holders? Whether it was decided to give the land of only village Patoda to the decree holders and the land from Jalkot was to be handed over only to the defendants? What was the decision of the authority who were working on partition about the third party obstructionist about whom there is reference in the panchanama of the year 1987? What about the papers of the partition of the lands from block No. 1220 & 1065 about which the decree holders claims that the the partition effected & panchanama is prepared & possession receipt i.e. taba pavati is issued on dated 20.06.2006 & 20.11.2007 respectively? Whether partition papers of the partition of the year 2006-07 are traceable or not?*
- 2. In case the Collector concludes that, the fresh partition of the whole properties is required then the partition be effected accordingly by considering the position of third party obstruction i.e. the holders of B.No.1220 be protected to avoid multiplicity of proceedings being the litigating is since year 1969.*
- 3. Decree holders to arrange for all the requirement for effecting the*

partition to its end accordingly.

4. *The original fine which is forwarded to this Court by a letter of Tahasildar dated 05/12/2018 O.W.No. 2018/record/kawi page No.1 to 141.*
5. *The decree holders are hereby restrained by this order not to interfere in the possession and cultivation of the objection petitioners over the land B.No.1220 area 02H-R43 till final execution of the decree in this proceedings?*
6. *Partition report returnable on 145.04.2019.*
7. *As the partition is going to be effected by the collector this execution proceeding is disposed of.”*

4. Heard learned advocate for the petitioners and the learned advocate for respondent No.6. Perused the memo of writ petition, documents annexed with the petitioner and the impugned order.

5. Admittedly, decision of the Appellate Court in Regular Civil Appeal No. 134 of 1970 has attained finality up to this Court. The decree holders are trying to execute the decree since 1980, however, the petitioners, who are the subsequent purchasers of the suit property, are obstructing the execution and till this date are successful in the same. There is no jurisdictional error or error of law committed by the Executing Court while passing the impugned order. No fault can be found with the reasoning

adopted by the Executing Court. In that view of the matter, this Court is not inclined to interfere in the impugned order in extraordinary writ jurisdiction. The writ petition, being devoid of merit, is dismissed.

6. The petitioners are at liberty to prosecute the remedy of revision before the State Government, which is already availed by them.

[NITIN B. SURYAWANSHI]
JUDGE