

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7800 OF 2023

Vijay Vishwanath Thigale ... Petitioner

V/s.

Dilip Vishwanath Thigale and Ors. ... Respondents

Mr. Rupesh Zade a/w Ms. Priyanka Gupta for the
Petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 8, 2023

P.C.:

1. Challenge in this petition under Article 227 of Constitution of India, the petitioner is challenging an order rejecting objections raised by the judgment debtor before Executing Court under Section 57 of the Code of Civil Procedure, 1908 seeking dismissal of execution petition on the ground that road in issue, does not survive with the decree holder.

2. The dispute arises out of decree passed in Regular Civil Suit No.478 of 2000 filed by the petitioner against defendant No.1-mother and defendant No.2-present respondent and others for perpetual injunction. In the said suit, defendant No.1-mother filed counter claim for possession. By the decree dated 9th July 2010 the Trial Court decreed the counter claim of mother directing petitioner to hand over the possession of first

floor described in paragraph No.1(b) and further granted injunction from disturbing defendant No.1's possession over the suit property.

3. On 4th May 2015, defendant No.1-mother died. According to defendant No.2, defendant No.1-mother on 3rd October 2011, executed a registered gift deed of suit property in favour of defendant No.2. Based on the said registered gift deed, the defendant No.2 filed execution.

4. The petitioner raised an objection that the execution is not maintainable as the petitioner is legal representative of defendant No.1 being son. However, in view of registered gift deed having been executed in favour of defendant No.2, the defendant No.2 is the legal representative of defendant No.1. Estate within the definition of Section 2(11) of the Code of Civil Procedure, 1908, the defendant's legal representative to mean those heirs who are entitled to succeed estate of the deceased. In view of the execution of registered gift deed, defendant No.2 is entitled to succeed estate of defendant No.1 and therefore, execution petition filed by the defendant No.2 is maintainable. Hence there is no merit in the petition.

5. The writ petition stands dismissed. No costs.

6. If permissible in law, the petitioner can challenge the registered gift deed executed in favour of defendant No.2.

(AMIT BORKAR, J.)