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

WRIT PETITION NO.7783 OF 2023

Sanjay Damu Nikam & Ors.

... Petitioners

V/s.

Sahebrao Gangadhar kadam & Ors

... Respondents

Mr. Sachin Gite, for petitioners.

Mr. Pratik B. Rahade a/w Mr. R. M. Haridas, for
respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 10, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the judgment-debtors filed an application under Section 47 r/w Order 21, Rule 23 & 26 of the Code of Civil Procedure, 1908 to stay the proceedings of execution on the ground that after the decree under execution, in a suit filed by the petitioners, the competent Court has granted decree in relation to suit property in favour of the petitioners.

2. The decree-holder filed Special Civil Suit No.379 of 1996 seeking specific performance and permanent injunction against predecessor-in-title of the judgment-debtor (petitioner). On 4 April 2008, the suit was compromised by passing compromise decree.

3. In an execution filed by the decree-holder, petitioners filed

an objection on the ground that the petitioners filed Regular Civil Suit No.91 of 2007 seeking partition and injunction. The said suit was decreed on 4 April 2008.

4. According to judgment-debtor, decree-holder has filed independent suit bearing No.10 of 2009 challenging the decree passed in favour of judgment-debtor wherein the Court has granted interim relief in favour of decree-holder.

5. According to petitioner, the execution of compromise decree passed in Special Civil Suit no.379 of 1996 needs to be stayed.

6. On perusal of the record, it appears that the petitioners predecessor-in-title was party to the suit. The petitioners are legal representatives of the party to Special Civil Suit No.379 of 1996.

7. Moreover, Regular Civil Suit No.91 of 2007 filed by the petitioners for partition and injunction was against the defendants therein. The decree-holder was not party to the said suit. Since, the decree-holder was not party to the said suit, the decree passed in such suit would not bind the decree-holder.

8. In so far as execution filed by the decree-holder for execution of decree passed in Special Civil Suit No.379 of 1996 will remain unaffected by the decree passed in a suit wherein decree-holder is not a party; hence, the rejection of objection by the Executing Court does not suffer from any legal infirmity.

9. The writ petition is, therefore, rejected. No costs.

(AMIT BORKAR, J.)