

AGK

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

WRIT PETITION NO.700 OF 2020

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.08.23
17:58:37
+0530

Devubai Santu Bhandare,
deceased through Legal Heirs

... Petitioner

V/s.

Rajesh Chandrakant Shinde & Ors.

... Respondents

Mr. P.P. Goyal for the petitioner.

Mr. Krishna Jaybhay i/by Mr. Abhijit P. Kulkarni for
respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 23, 2023

P.C.:

1. Challenge in this writ petition is to the order passed by Executing Court rejecting objections raised by Judgment Debtor under Section 47 of the Code of Civil Procedure, 1908.

2. The respondent is decree-holder in whose favour the Apex Court has passed decree for possession by order dated 25 October 2010 in Civil Appeal No.2980 of 2004. The Apex Court set aside the judgment of this Court and revived decree for possession passed by the Appellate Court.

3. The petitioner has raised two objections before the Executing Court: (i) Execution Petition is barred by limitation; and (ii) Execution Petitioner is not decree-holder.

4. In so far as point of limitation is concerned, the Apex Court by order dated 25 October 2010 allowed the appeal. Therefore, the decree is deemed to have been passed on 25 October 2010. The execution is filed in the year 2015 which is within limitation.

5. In so far as the objection regarding Execution Petitioner being not decree-holder is concerned, it is not in dispute that the Execution Petitioner has purchased the suit property during pendency of the appeal before this Court. Merely because this Court allowed the appeal, it will not divest the title of the plaintiffs as the Apex Court has ultimately set aside the order of this Court. The purchaser of the property will have all the rights of its predecessor-in-title including right to execute the decree which forms suit property.

6. There is no merit in the writ petition. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)