



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 8122 of 2022

Ratnaprabha Wd/o Manikrao Thelkar and others

Versus

Sheikh Safdar Sheikh Raheman Musalman (died) through legal heirs

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Smt. S.W.Deshpande, Advocate for the petitioners.

Shri A.B.Patil, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 7th OCTOBER, 2023.

Heard.

2. The application Exhibit 159 moved by the petitioner for permission to lead evidence on the objection filed under Order 21 Rule 97 of the Code of Civil Procedure, 1908, came to be rejected vide impugned order dated 3rd October, 2022, passed by the 2nd Joint Civil Judge, Junior Division, Chandur Bazar, in Regular Darkhast No. 10 of 2012, is under challenge in this writ petition.

3. The learned Executing Court has dealt with the objection and prayers of the petitioners in detailed and after observing the conduct of the petitioners and the fact that the decree was passed on 31st October, 1995 and the execution proceeding is pending since

1996, the learned Executing Court has rightly rejected the application.

4. Moreover, earlier also the objection raised by the petitioners to obstruct the execution of decree came to be rejected. For this purpose paragraphs 7 and 16 of the order is relevant which read thus:

7. It is pertinent to note that the D.H. filed the pursis at Exh-136 on 05/03/2019 that he took the possession of the suit property. The said pursis was seen and matter is kept for order. This seems that the possession warrant in respect of suit property was already executed and decree seems to be satisfied. Meanwhile, on 12/03/2019, one of the obstructionist i.e. Ratnaprabha Thelkar (Wife of original J.D. No. 01) filed pursis at Exh-137 that D.H. took possession of the suit property, however, the appeal is pending before the Hon'ble Bombay High Court against Judgement and order passed by court. Subsequently, the obstructionists namely Ratanaprabha Manik Thelkar, Pranav Manik Thelkar and Pragati Manik Thelkar appeared through learned advocate Shri S.M. Kothale before this court and they filed the objection under Order 21 Rule 97, 99 and 101 of the CPC at Exh-143 and Exh-148 on 19/08/2019 and 01/01/2020 respectively. Similarly, they moved an application at Exh-147 for grant of stay to effect, execution and operation of Judgment and decree in RCS No. 18/1991 and the present execution proceeding. After hearing both parties, an order was passed below Exh-147 and the said application was rejected by this court.

8 to 15....

16. It is seen from objection application that the obstructionists are not claiming any independent right, title or interest in property in question and is claiming

through J.D. No. 01. Further, the said objections was raised in the year 2019 i.e. after lapse of more than 24 years from date of Judgement and decree dtd. 31/10/1995 and more that 43 years from execution of Will on 02/01/1997. In light of above discussions, in my view, the obstructionists would fall within purview of “person bound by the decree” as contemplated under Order 21 Rule 35 (1) of the CPC. Further, it would not be necessary to determine the objection raised by obstructionists by giving him an opportunity to lead evidence particularly when issue regarding the Will was earlier decided. Considering the above submissions, discussions and reasons, I do not find any reason to allow the present application in interest of justice. As a result, I proceed to pass the following order;

6. Thus, considering the reasons recorded by the learned Executing Court for rejection of the application of the petitioner, I do not find any error committed by the learned Executing Court. Accordingly, the petition is dismissed.

[ANIL S. KILOR, J.]