



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 WRIT PETITION NO. 395 OF 2021

LAIKURREHMAN KHAYYUMKHAN PATHAN
VERSUS
GAJRABAI SITARAM CHIGURE THROUGH LEGAL HEIRS

Dr. R. R. Deshpande h/f Ms. P. R. Deshpande, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 22nd NOVEMBER, 2024

PER COURT :-

1. None present for the respondents though notice is duly served of the hearing of this petition. Absence of the respondents indicates that they have no inclination to oppose the petition.

2. Heard learned counsel for the petitioner. Perused the petition as well as the documents annexed with the petition.

3. In short the material facts which lead to the filing of this petition can be narrated as under:

. One Janabai filed suit for partition bearing R.C.S. No. 118/1998 on 05/03/1998 against the defendants. Amongst these defendants one of the defendant was Gajrabai. The said suit came to be decided on 16/10/2002. It is thereafter Gajrabai executed agreement to sale in favour of the petitioner on 08/06/2011. Since, no sale deed was

executed pursuant to the said agreement to sale, suit for specific performance bearing R.C.S. No. 606/2012 came to be filed on 23/06/2012. There was a settlement between the petitioner and Gajrabai before Lokadalat on 16/09/2012 and the said suit was decreed accordingly. Undeniably the said decree is intact even as of today for want of any challenge thereto. It is the case of the petitioner that after passing of the decree in his favour, Gajrabai executed relinquishment deed dated 15/10/2012 without any right to do so.

4. The petitioner thereafter filed Regular Darkhast bearing No. 37/2014 for execution of the decree of specific performance passed in R.C.S. No. 606/2012. In this proceeding the order impugned came to be passed wherein it is held by the learned Execution Court that since Gajrabai has relinquished her right in the suit property, the petitioner has no right to seek execution of the decree.

5. Learned counsel for the petitioner submits that by passing of the consent decree in R.C.S. No. 606/2012 on 16/09/2012, executable rights are created in favour of the petitioner in respect of the subject property. It is his further submission that once the decree is passed or for that purpose even when suit is filed, it was not open for the Gajrabai to create any third party interest in the suit property and in any case any such interest is created or even pendente lite, after passing of the

decree, the person in whose favour such interest is created is bound by the decree so passed. It is his submission that the Execution Court has committed error in placing reliance on Darkhast No. 18/2012 filed in respect of the execution of the decree passed in R.C.S. No. 118/1998 to make it as a basis for the rejection of the execution proceeding. He drew attention of the Court to the order passed in R.D. No. 18/2012 wherein there was no relinquishment of right by Gajrabai in favour of any person in respect of subject property.

6. The facts as they appeared from the record indicates that there is a decree passed by the Competent Court in favour of the present petitioner in R.C.S. No. 606/2012 on 16/09/2012. By this decree the petitioner is entitled to get executed sale deed from Gajrabai. There is no challenge to this decree as such the decree has attained finality.

7. Now the question arises before this Court is as to whether the act of Gajrabai of relinquishing her right in respect of the subject property after passing of the decree in favour of her children is permissible in law. Needless to say that once the suit is filed, any transaction in respect of subject matter of the suit is always subject to the outcome of the said proceeding since the transaction is pendente lite. In the instant case as the record reveals the decree is passed on 16/09/2012 whereas the relinquishment of the right in the subject

property of the said decree has been done on 15/12/2012. This Court therefore finds substance in the contention of the learned counsel for the petitioner that even if such document is executed, the person who has acquired title on the basis of the said document is bound by the decree passed against Gajrabai.

8. All these aspects are not considered by the Execution Court while passing the impugned order. Having regard to the afore stated facts, this is not a case wherein the right of the petitioner to get execution of decree stood extinguished. As a result of this, the impugned order deserves interference. Accordingly, impugned order dated 03/02/2020 passed below Exhibits 1 and 44 is hereby set aside. R.D. No. 37/2014 is restored. Execution Court to decide the darkhast in accordance with law.

(R. M. JOSHI, J.)

ssp