



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13477 OF 2024

Shankar Vishwanath Kumbhar

VERSUS

Laxmibai Irappa Birajdar Died Through Lrs Bhimashankar Irappa Birajdar
And Others

Mr. S. B. Gastgar, Advocate for petitioner

CORAM : R. M. JOSHI, J.

DATE : 10th DECEMBER, 2024

PER COURT :-

1. Petitioner seeks to challenge order dated 05.02.2024 passed below Exhibit 51 in Regular Darkhast No. 22/2022.
2. Petitioner has filed application before the Execution Court below Order I Rule 10 of Civil Procedure Code (for short "C.P.C") to join himself as a party to the said proceeding. The said application came to be filed with a contention that the petitioner has purchased the subject property from Meenabai, who is daughter of original owner of the property i.e., Laxmibai. It is his contention that on the basis of Gift Deed executed by Laxmibai in favour of Meenabai, he became owner of the said property and on execution of registered sale deed in favour of the petitioner, he has become owner thereof.
3. In the year 1981, Laxmibai had filed R.C.S. No. 357/1981

against Gunddu Sambhaji Usture seeking possession of the same property from him. During pendency of the said suit Laxmibai died on 25.01.2021 and LRs are brought on record which include Meenabai. This suit came to be decreed on 01.09.2022 whereby the defendant therein was directed to deliver the possession of survey No. 115/K situated at Moja Khillari, Tq Ausa, District Latur to the plaintiff.

4. It is a contention of the petitioner that he is aggrieved by the said decree and that since is likely to lose the possession of the said property, he is necessary party to the Regular Darkhast filed for execution of the said decree.

5. Learned Execution Court rejected the said application by observing that the applicant/petitioner is neither necessary nor an appropriate party to the suit as well as to the execution proceeding.

6. Learned counsel for the petitioner submits that on the basis of the registered sale deed, name of the petitioner is mutated in the revenue record and challenge to the said entry by the original owners is unsuccessful. It is thus his contention that he is not only owner of the property but also in possession of the said property and as such the order of rejection of an application is not sustainable.

7. If the case of the petitioner is accepted to be true, his vendor

seems to have acquired title in the subject property on the basis of gift executed by Laxmibai. This gift is said to be executed after 1981. R.C.S. No. 357/1981 filed by Laxmibai indicates that she was not in possession of the suit property. Though, it is sought to be argued on behalf of the learned counsel for the petitioner that the defendant therein was a tenant and as such Laxmibai was in de jure possession of the said property, perusal of the judgment and decree passed in R.C.S. No. 357/21981 shows that the defendant was able to prove a sale deed in his favour.

8. If it is a case of the petitioner, then the vendor acquired right, title and interest in the subject property on the basis of gift, the said gift could not be said to be completed unless the possession is handed over to the donee either physical or at least constructive. No such case is made out. Resultantly, the possession cannot be said to be handed over to the petitioner. Merely, on the basis of mutation entries, at this stage, this Court is not inclined to accept the said contention of petitioner, when there are admission of Donor about she having no possession of property in question.

9. In view of the above, this Court finds no perversity in the impugned order.

10. Learned counsel for the petitioner at this stage submits that the execution proceeding be stayed for some time to enable the petitioner to take appropriate steps for taking exception to the judgment and decree passed in R.C.S. No. 357/1981.

11. Perusal of the record indicates that he had knowledge about the said decree as back as in May, 2024. This Court, therefore, finds no reason to concede to his request. In any case, the issue before this Court is as to whether the impugned order is legal and proper, and hence, there is no propriety in going into such request. The impugned order is found to be legal and proper and as such, no interference is called therein.

11. Hence, petition is dismissed accordingly.

(R. M. JOSHI, J.)

bsj