



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

966 WRIT PETITION NO. 14598 OF 2023

VIKRAM ANILKUMAR PATEL AND ANOTHER

VERSUS

PRAVINCHANDRA JINABHAI PATEL DECEASED THROUGH LRS
SAVITABEN PRAVINCHANDRA PATEL AND OTHERS

...

Advocate for the Petitioners :

Mr. V. D. Sapkal, Senior Advocate i/b. Mr. Sandip R. Sapkal

Advocate for Respondent No.3 :

Mr. V. D. Hon, Senior Advocate i/b. Mr. Ashwin V. Hon

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CORAM : ARUN R. PEDNEKER, J.

DATE : 24th APRIL, 2024

PER COURT:

1. Writ Petition No.11825 of 2023 was filed challenging the order dated 16.09.2023 passed by the executing court at Exhibit 31, in Special Darkhast No.1351 of 2015,, which is quoted below:-

“

Order

1. *Issue precept for attachment of properties as per prayer clause-A of Application (Exh. 31).*

2. *Costs in cause.”*

2. The Exhibit 31 is filed by the respondent herein claiming for the following reliefs:-

“a) *That the warrant for attachment of properties detailed in annexure A fallen to the share of Judgment Debtors and included in the award dated 07/07/1996 and 03/11/1996*

respectively, may kindly be issued against Judgment Debtors and necessary directions may kindly be issued for sale of the said properties and disbursement of sale proceeds according to law for full satisfaction of the decretal amount alongwith interest @ 18% p.a. till payment and / or realisation.

b) The Judgment Debtors be prohibited from alienating / transferring and / or creating third party interest in the properties or any of the properties mentioned in Annexure A in any manner whatsoever.

C) It is further prayed that the respective revenue authorities be directed to mutate the names of Decree Holders in respect of properties fallen to their share and detailed in annexure B to this application and included in the award dated 07/07/1996 and 03/11/1996 respectively.”

3. The executing court had allowed Exhibit 31 in terms of prayer clause “A” by order dated 16.09.2023. It was noticed by the respondent that the prayer clause “C” in Exhibit 31 was inadvertently not mentioned in the final order dated 16.09.2023, at Exhibit 31, as such, moved an application at Exhibit 182. The said application is allowed against which the present writ petition is filed.

4. Meanwhile, the order dated 16.09.2023 passed in Exhibit 31 was challenged in Writ Petition No.11825 of 2023 and the order passed below Exhibit 31 is modified by this court by remitting the matter back to the executing court to follow the procedure under Sections 37 and 38 of the Maharashtra Stamp Act and Section 17 of the Registration Act and

then sent precept to the Collector for effecting the mutation entries in the names of the decree-holder and judgment debtors of the undisputed properties came to their shares.

5. In view of the order passed at Exhibit 31 and, since, the present writ petition also relates to prayer made in Exhibit 31, at clause “C”, the present writ petition would not survive and in consonance of the order passed by this court in Writ Petition No.11825 of 2023, the petition is partly allowed and the impugned order is modified and the matter is remitted back to the executing court to be decided in the execution application no.1351 of 2015. This may be decided along with Exhibit 31.

6. Needless to mention, all interim orders or statements made stands vacated.

7. The writ petition stands disposed of accordingly.

[ARUN R. PEDNEKER, J.]

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