



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

988 WRIT PETITION NO. 7703 OF 2022

KASHINATH DEVRAO KAKADE AND OTHERS

VERSUS

TRIVENIBAI GYANBA KAKADE DIED THROUGH L.RS. VANARASHIBAI
LIMBAJI SHINDE AND OTHERS

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Mr. V.H. Solanke h/d. Mr. Ranjeev T. Deshmukh – Advocate for Petitioners
Mr. A.A. Khande – Advocate for Respondent No.2
Mr. A.R. Muley – Advocate for Respondent Nos.3A to 3C

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 12.12.2025

PER COURT :

1. Heard learned Counsel for the respective parties.
2. The petitioners assail the order dated 20.04.2022 passed by learned Civil Judge, Junior Division, Kallam, Dist. Osmanabad below Exhibit 14 in R.D. No.51/2012, whereby the application filed by judgment debtor for stay of proceeding under Section 11 of the Code of Civil Procedure came to be rejected.
3. Learned Counsel for the petitioners submits that the application was filed before the Executing Court contending that the execution proceedings are barred by the principle of *res judicata*. It is submitted that when R.C.S. No.105/1974 was filed, the same came to be disposed

of and pursuant thereto RD. No.37/1979 was also disposed of on the same ground. Subsequently, R.D. No.51/2012 was filed, which according to the petitioners, is barred under Section 11 of the Code of Civil Procedure.

4. Per contra, learned Counsel for the respondent submits that the decree passed in R.C.S. No.105/1974 was not fully satisfied and possession of the entire suit property was not handed over to the petitioners. However, as the decree was not fully satisfied in accordance with law and due to misconception a pursis Exhibit 86 was filed. He further submits that the principle of *res judicata* does not apply to the present proceedings.

5. Having heard learned Counsel for the respective parties and upon perusal of the record, it is not in dispute that R.D. 37/1979 was disposed of on the basis of pursis at Exhibit 86 and thereafter the decree was sent to the District Collector under Section 54 of the Code of Civil Procedure.

6. Thereafter, it was found that though the decree contemplated distribution of shares, including the share of the respondent, the actual possession of land delivered to respondent was not in accordance with the decree, particularly with respect to 3 Acres 44 R. Consequently, execution proceedings were initiated on the ground that the possession was not fully handed over to the decree-holder/respondent No.2.

7. In view of the aforesaid facts, the earlier proceedings cannot be said to have finally satisfied the decree and therefore the bar of *res judicata* is not attracted.

8. In view thereof, I do not find any perversity or illegality in the order dated 20.04.2022 passed by learned Civil Judge, Junior Division, Kallam, Dist. Osmanabad below Exhibit 14 in R.D. No.51/2012, warranting interference under Article 227 of the Constitution of India.

9. Hence, the Writ Petition stands dismissed. No order as to costs.

[SIDDHESHWAR S. THOMBRE]
JUDGE

Pooja Kale/