



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 WRIT PETITION NO. 458 OF 2016

SAGJANBAI TUKARAM SAWARE

VERSUS

BHAGIRTHIBAI LAXMANRAO SAWARE DIED THROUGH ASSIGNEE DR SOW
ASHABAI PRABHAKAR SAWARE

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Advocate for the Petitioner : Mr. V. V. Bhavthankar

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CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 05.05.2025

PER COURT :-

1. Mr. Bhavthankar, learned counsel for the petitioner is present and nobody appears for the sole respondent.
2. By last order, i.e. 22nd April 2025, it was observed that the learned counsel for the respondent had sought time to take steps as the General Power of Attorney holder of the sole respondent has expired and by order dated 04.02.2025, 04.03.2025 and 01.04.2025, time was granted to the respondents, however, nobody appeared for the respondent on the last date. Today also, nobody appears on behalf of the respondent.
3. Heard the learned counsel for the petitioner. He submits that the

instant petition raises challenge to an order dated 07.12.2015 passed by the Court of Civil Judge Senior Division, Ambajogai, on an application at Exh-29, by which the Court had issued a Show Cause Notice to the petitioner (respondent in the proceedings) as to why the agricultural land bearing Block No.4 of Village Chanai, should not be attached for disobedience of order and failure to pay the court fees. He submits that the impugned order is patently perverse and unsustainable in law since the same is passed without considering the factual and legal aspects of the matter. The controversy arises on the basis of Miscellaneous Civil Application filed by the respondent (Bhagirthibai) seeking annulment and cancellation of heirship certificate which was issued in favour of the petitioner by order dated 06.09.2013 in Miscellaneous Civil Application No.187 of 2013.

4. Thereafter, an application purported to be under Section 7 of the Bombay Regulation Act, 1827 seeking annulment of the heirship certificate is filed vide MCA No.357/2013. In response to the notice on this Miscellaneous Civil Application, the petitioner who was arrayed as sole respondent appeared on 3rd January 2014 and requested for adjournment on ground that the learned counsel had some medical issues. This was the first date of his appearance and adjournment was sought, which was opposed by the

respondent herein.

5. It is surprising to see that on the application for adjournment which was filed on the first date, the learned Trial Court has passed order dated 03.01.2014, observing that '*Perused application and say. The learned counsel for the applicant is ready to deposit C F which comes to Rs.24,975/- for valuation of Rs.3,33,000/- till 06.01.2014. Hence, adjournment is granted subject to depositing C F of Rs.24,975/- only till 06.01.2014.*' This order does not demonstrate any reason for issuing direction to deposit court fees of Rs. 24,975/-, and there is no material to show any readiness on the part of the respondent of that case (petitioner herein) expressing readiness to deposit court fees of Rs.24,975/-. In any case, there was no reason for issuing directions to the respondents in that case (petitioners herein) to deposit court fees on the first date when adjournment was sought. Even though, the applicant had contended that at the time of granting heirship certificate, there was improper valuation and requisite court fees was not paid, however, issuing directions on adjournment application about deposit of deficit court fees of earlier proceedings was not warranted. It has to be noted that this inference about necessity of deposit of court fees on the heirship certificate, if any, could have been arrived at after affording an opportunity to the respondent of that

case. It is pertinent to note that on the first day, after the respondent therein had put his appearance, the court had straightway passed order to deposit the court fees. Thereafter, in the said Miscellaneous Civil Application, the applicant had filed an application on 10.01.2013 (Exh-29) seeking directions to detain the respondent in civil prison and for attachment of his ancestral landed property bearing Gat No.4 situated at Village Chanai, due to disobedience of order dated 03.01.2014. On this application, without waiting for say of the respondent only because the notice was shown to have been served, the Trial Court has straightway passed the impugned order dated 07.12.2015 issuing Show Cause as to why the agricultural land should not be attached for disobedience of order and failure to pay the court fees.

6. Pertinent to note the impugned order does not refer to any provision of law which is sought to be invoked by the applicant. Further, this order is based on alleged disobedience of earlier order dated 03.01.2014, directing deposit of court fees, which itself appears to have been passed arbitrarily. It has also to be noted that the order dated 07.12.2015 on the application at Exh-29 is passed in haste, without affording proper opportunity to the respondent of that case (petitioner herein) to submit his say on the issue of requirement to deposit court fees even before any reply on merit could

be filed. The impugned order although in the nature of issuance of Show Cause Notice depicts the view of the court to have arrived at a conclusion that the petitioners have disobeyed the order dated 03.01.2014 by failure to deposit court fees of Rs.24,975/-. Thus, impugned order is unwarranted. The proceedings for annulment of certificate by Miscellaneous Civil Application No.351 of 2013 were required to be decided on merits by affording proper opportunity to the respondent of that case (petitioner herein) to file his reply/written statement. The impugned order dated 07.12.2025 is arbitrary and unsustainable in law, it deserves to be quashed and set aside.

7. In view of the above, the writ petition is allowed.
8. Order dated 07.12.2015 passed by the Court of Civil Judge Senior Division, Ambajogai, in MCA No.357 of 2013 on application at Exhibit-29 is quashed and set aside.
9. The writ petition is disposed of accordingly.

(PRAFULLA S. KHUBALKAR, J.)