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

**936 WRIT PETITION NO. 14899 OF 2023**

**GURUNATH RAMRAO JADHAV**

....Petitioner

**VERSUS**

**PRAKASH RAMRAO AJDAHV**

.....Respondent

Mr. S. B. Solanke, Advocate for the petitioner  
Mr. Pravin Kalani, Advocate for the respondent

**CORAM : KISHORE C. SANT, J.**

**DATE : 10<sup>th</sup> JANUARY, 2025**

**P. C.**

1. Heard the parties.

2. The petitioner before this court is the judgment debtor. The respondent is a decree holder. The order under challenge is the order passed on an application below Exh.44 in execution proceeding bearing RD No.6/2021. By way of decree dated 23-10-2019 in RCS No.387/2019 the learned Joint Civil Judge Senior Division has held and declared that the present respondents has easementary right over the suit land. The

present petitioner was enjoined from causing any obstruction to the use of the suit land by respondents.

3. The respondent therefore filed RD No. 6/2021. The petitioner filed an application below Exh.44 in the said Darkhast. It is submitted that decree was in respect of the land Gut No. 165 to the extent of 10-R land in which it was declared that respondent is having easementary right to use as way to go his property. In subsequent proceeding the mother of the present petitioner and their another brothers were before the Sub-Divisional Officer in the proceeding under Senior Citizen Maintenance Act. In the said proceeding SDO directed all three brothers to transfer 40-R land each in favour of their mother. The respondents have been specifically directed to transfer 30-R land from Gut No. 163 and 10-R land from Gut No.165 and 40-R from Gut No. 101. The said order was confirmed even in the appeal by the learned Collector by its judgment and order dated 10-03-2021. Pursuant to the order passed by the Sub-Divisional Officer, now all three brothers have transferred the land in

favour of their mother to their extent including the present suit land. The possession is also handed over on 23-12-2020.

4. In the facts recorded above, the petitioner filed an application stating that now the respondent has no concern with the suit property as very same property is transferred to the mother. In view of the order 21 Rule 16 of the Code of Civil Procedure, now it is only mother who has right to execute the decree. The execution filed by the respondent has become infructuous and therefore, it is prayed for dismissal of the execution proceeding.

5. The said application was opposed by the respondent. It is the case of the respondent that ultimately decree needs to be executed. A decree is granted in favour of the respondent. The decree stands as it is. The petitioner is not cooperating in the execution proceedings and remaining absent. The respondent has every right to execute the decree and prayed for rejection of the application.

6. The learned executing court considered the application and the submissions. It is recorded that the contention of the J.D. is only that the D.H. has lost his ownerships over the suit property involved in execution proceedings. The application thus came to be rejected by way of impugned order.

7. The learned advocate for the petitioner vehemently argued the petition. He submits that respondent, as on today, does not have any concern with the suit property. Today, it is the mother who is in possession of the land pursuant to the order passed by the SDO in the proceeding under the Senior Citizen Maintenance Act. The said order is confirmed by the authority. When the possession is not with the respondent continuance of the execution proceedings would be an abuse of process of law. The learned trial court failed to appreciate this aspect. He, thus, prays for allowing the petition.

8. The learned advocate for the respondent submits that it is not the concern of the petitioner as to who has to execute the decree. The respondent is the decree holder and there is no dispute that the land is transferred to the mother only for limited purpose during her life time. From the Collector's order it is clear that mother has not become absolute owner. It is only for the purpose of to secure maintenance of the mother, the entries are taken in the revenue record in the name of mother. By that it cannot be taken that the respondent has lost ownership over the land. He, thus, supports the impugned order.

9. Only the contention appears before the court as to whether now the decree can be executed by the respondent in view of the order passed by the learned Collector and subsequent transfer of the land in favour of the mother of the parties. From the order of the Collector it is clear that only name of the mother is taken on the property during her life time i.e. only for the purpose of maintenance. That will not have any

effect over the decree passed by the Civil Court in suit between respondent and the petitioner. Assuming that right of the mother is created that is created only for a limited period for the purpose of maintenance. The submissions of the petitioner that in the decree for the respondents has suppressed the fact of losing the possession. This court does not find any merit in the said submissions. No other illegality, perversity is pointed out in the impugned order passed by the executing court. Thus, this court is inclined to dismiss the writ petition. Writ petition stands dismissed. No order as to costs.

**[KISHORE C. SANT, J.]**

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