



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 306 OF 2024

Rambharose Laxman Yadav

... PETITIONER

Versus

Satyanarayan Nannu Yadav & Ors.

... RESPONDENTS

Mr. S. C. Mehadia, Advocate for Petitioner.

Mr. C. A. Joshi, Advocate for Respondent Nos.1 to 3.

CORAM : R. M. JOSHI, J.
DATE : JULY 01, 2025.

ORAL ORDER

. Heard Mr. S. C. Mehadia, learned Counsel for the Petitioner and Mr. C. A. Joshi, learned Counsel for the Respondent Nos.1 to 3. By consent of both sides, Petition is heard finally at the stage of admission.

2. This Petition takes exception to the common order dated 14/9/2023 passed below Exhibits-107 & 109 by the Civil Judge Senior Division, Akola in F. D. No.4/2017.

3. The Petitioner is Judgment Debtor in the said proceedings. There are certain admitted facts which can be reproduced for the sake of convenience as under :

4. The suit came to be filed for partition and separate possession of the suit properties being Special Civil Suit No. 195/1990. This suit was decreed on 27/2/1991. This decree is confirmed in Regular Civil Appeal No. 23/2012. There is no further dispute about the fact that the decree has attained finality. In this backdrop, the said decree is put for execution before the Execution Court.

5. The Petitioner filed application Exhibits-107 and 109 contending that all the joint family properties are not included in the suit and that the grandmother of the Plaintiffs and Defendants had executed Will dated 29/11/1979 and by virtue of which, the Petitioner and two other brothers are entitled to the share of the grandmother in the said properties.

6. The application came to be opposed by the Decree Holder. The learned trial court rejected the application with observations that the decree passed by the trial court has attained finality and it is not within the jurisdiction of the Execution Court to cause interference therein.

7. Perusal of record indicates that the alleged execution of Will is of 29/11/1979 and the said aspect was duly brought to the notice of the First Appellate Court by the Petitioner. Similarly, same issue was raised before this

Court. It is the contention of the Petitioner that both these courts have not considered the said position and passed the order. Even if this submission is accepted, it is not open for the Execution Court to cause interference in the decree.

8. Insofar as the contention of the Petitioner about their being other joint family properties is concerned, the Petitioner in application Exhibit-107 does not give any details as to when he got knowledge about those properties. This is not the case wherein the parties have not contested the suit. The suit seems to have been contested till the Hon'ble Supreme Court. Thus, it cannot be said by any stretch of imagination that if those facts were true, they were not within the knowledge of the Petitioner. If the Petitioner had chosen not to get those properties included in the suit, now it is open for him to make any grievance in this regard. The Execution Court has passed order rightly taking into consideration the relevant facts and the law on the point. Hence, the Petition has no merits. The same stands dismissed.

(R. M. JOSHI, J.)