

MHNS100000182018



M.A.C.P. Darkhast No.1/2018

Mandabai Madhukar Charoskar

Vs.

Devidas Bhaskarrao Gaikhe

Order below Exh.41

Read applicaiton say filed thereon by the judgment debtor below Exh.42. Heard advocate Shri. Bhosale for the decree holder and advocate Shri. Thakre for judgment debtor. Read written argument filed on behalf of judgment debtor.

2. Advocate Shri. Bhosale submitted that in M.AC.P No.88/2010, the Judgment debtor is ordered to pay compensation of Rs.14,44,680/- along with interest at the rate of 7% per annum from the date of filing of the petition. However, judgment debtor has not paid any amount to the decree holders.

3. Advocate Shri. Bhosale submitted that despite all efforts made by decree holders, amount of compensation is not realised. Advocate Shri. Bhosale submitted that land

block no.1030 located at Chandori is ancestral property of judgment debtor and judgment debtor has undivided share in it. Therefore, for recovery of compensation amount, land in block no.1030 be attached before putting it under auction.

4. Advocate Shri. Bhosale submitted that on 29/09/2022, order to issue warrant for recovery of amount is already passed. Hence, the agricultural land in block no.1030 be attached. Advocate Shri. Bhosale submitted that copy of mutation entry no.7629 shows that land in block no.1030 is a joint family property.

5. Advocate Shri. Thakre for the judgment debtor submitted that there is no documentary evidence to show that judgment debtor has any share in the agricultural land in block no.1030. Advocate Shri. Thakre submitted that said property is self-acquired property of Bhaskar Gaikhe. Advocate Shri. Thakre further submitted that there is no proof that the said property is in possession of judgment debtor.

6. Advocate Shri. Thakre submitted that without issuing show cause notice to other co-sharers, property can not be attached. Advocate Shri. Thakre submitted that even if for the sake of argument it is assumed that it is joint

family property, apart from Bhaskare Gaikhe and judgment debtor there are four other co-sharers. In such circumstances, property could not be attached.

7. Present execution petition is filed for recovery of Rs.21,90,000/- The award is passed on 02/08/2017, since then the award remained to be executed. For recovery of compensation amount, warrant of attachment of movable properties was issued vide exhibit-10. However, it remained to be executed. The bailiff report shows that Leelabai Bhaskar Gaikhe and Savita Rajendra Gaikhe resisted execution of attachment warrant. Report of bailiff dated 19/09/2019 shows that the family members of judgment debtor refused to tell whereabouts of judgment debtor and resisted to affix copy of notice on the house. Therefore, it is clear that the judgment debtor is avoiding payment of compensation amount. It is only on issuance of arrest warrant, presence of judgment debtor could be secured before the court.

8. By this application, decree holder is seeking attachment of agricultural land in block no.1030 saying that it is ancestral property of judgment debtor. Advocate Shri. Thakre submitted that it is not ancestral property of judgment debtor. On the contrary, it is self acquired property of Bhaskar Gaikhe. I have gone through the copy of

mutation entry no.7629. It shows that Bhaskar Mhaluji Gaikhe received 89R land in partition. Therefore, it is clear that it is not self acquired property of Bhaskar Gaikhe.

9. Considering fact that judgment debtor is avoiding payment of compensation and is having undivided share in land block no.1030, I am of view that for recovery of compensation amount, undivided share of judgment debtor needs to be attached for recovery of compensation amount. As far possession is concerned, possession of one co-sharers is considered as possession of all co-sharers in respect of joint family property. Even if, there are other five co-sharers of said property, at least 1/6th share in land block no.1030 can be attached. Hence, I pass the following order.

ORDER

1. Application is partly allowed.
2. Issue attachment warrant as per order 21 rule 54 of Civil Procedure Code, of 1/6th share in land block no.1030 located at Chandori, Tal. Niphad, Dist. Nashik.

Place: Niphad
Date : 25/01/2024

sd/xxx
(B.D. Pawar)
Member
M.A.C.T. Niphad.