

ORDER BELOW APPLICATION EXH.48 IN RD NO.12/2008

(Kondabai Taware V/S Nivrutti Taware)

JD moved this application and prayed to stay execution of decree.

2] According to JD, the petition is filed for execution of decree passed in RCS No.121/1997 on 31/07/2000. It is declared that DH Kondabai is having 7/12th share in the suit property. During pendency of execution petition, DH Kondabai is expired. She is having legal heirs as DH no.2 as well as JD nos.1 to 6. JD filed application on 09/11/2012. DH filed say to said application on 04/02/2013. In said say, DH contended that Kondabai allegedly executed Will of her share in favour of Sushila and Vijay Parshuram Konde on 08/11/2001.

3] According to JD, said Will deed appears to be executed during pendency of execution petition. No probate is obtained from any court in respect of said Will. The share of deceased Kondabai cannot pass to Sushila and Vijay as per said Will deed. The question of Will have to be decided under Section-47 of CPC. No partition can be effected unless the Will is proved. Defendant/JD lastly prayed that till decision of Will is decided, handing over possession of the suit property be stayed.

4] DH/plaintiff no.2 opposed the application by filing say at Exh.51. She contended that say on application dtd.04/02/2013 be treated as say to present application. According to her, the court is having jurisdiction to decide the issues legally arise in execution proceeding. There is no need to obtain probate except in 4 metropolitan cities. JD did not file any suit for declaration that the Will executed by Kondabai is bogus and illegal. The court can decide the question of Will. The prayer of

JD is not legal one. She lastly prayed to reject the application.

5] Heard both sides. Perused record. The execution petition is filed in the year 2008. CJJD, Saswad, decreed RCS No.121/1997. Being aggrieved by said judgment, present JD Nos.1 and 5 preferred RCA No.974/2000 before Hon'ble District Judge, Pune. Said appeal was dismissed. The decree passed by Saswad court is confirmed with modification in respect of partition of house nos.275 and 186 situate at village Javalarjun, Tal. Purandar.

6] During pendency of execution petition, Kondabai Narsingh Taware is expired. DH no.2 Sushila Parshuram Konde is daughter of deceased Kondabai. She was also declared having 1/18th share in the suit properties. Deceased Kondabai was declared having 7/18th share in the suit properties.

7] DH/plaintiff no.2 come with case that deceased Kondabai executed registered Will deed in favour of herself and Vijay Parshuram Konde. As per Section-47 of the Code of Civil Procedure, the executing court has to decide all the questions arising between the parties to the suit, in which the decree was passed or their representatives, relating to the execution, discharge or satisfaction of the decree. Said questions shall be determined by the court executing a decree and not by a separate suit.

8] It is now well settled law that except 4 metropolitan cities, probate of Will is not necessary. Therefore, the contention of JD about probate is not correct. However, DH has to prove the execution of Will in present proceeding. The question of said Will is to be determined by the executing court and not by a separate suit. Said question is necessary for

execution, discharge and satisfaction of the decree. Until the question of Will is determined, it would be just and lawful to stay handing over possession of the suit properties. Considering above discussion, I pass the following order...

ORDER

1. The application Exh.48 is partly allowed.
2. The Tahasildar, Purandar, shall not hand over possession of the suit properties as per execution of the decree until further orders.
3. Issue letter accordingly.

Place: Saswad

Date : 17/02/2017

(V. K. Jadhav)

Civil Judge (J.D.), Saswad.

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment are same word for word as per original order.

Name of Steno - P. S. More
Court Name - V.K. Jadhav, CJJD, Saswad.
Date - 17/02/2017
Order signed by
P.O. on - 17/02/2017
Order uploaded
on - 18/02/2017