courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(1998) 01 BOM CK 0010

In the Bombay High Court

Case No : Civil Revision Application No. 103 of 1997

Madhukar Sagun Karpe (deceased) through his LRs/heirs

Date of Decision : 09-01-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54, Order 21 Rule 58, 115

Citation : AIR 1998 Bom 201 : (1998) 3 BomCR 104 : (1998) 3 BomCR 101 : (1998) 2 MhLj 232

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : V.P. Thali, for the Appellant; G.V. Tamba, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—By the present petition the petitioners are challenging the order dated 15th July 1996 passed by the Civil Judge, Senior Division, Panaji, in Civil Miscellaneous Application No. 15/96/A in Execution Application No. 7/93/A. The facts in brief are that a Special Civil Suit No. 134/84/A was instituted by the respondent herein against one Mr. Madhukar Sagun Karpe, the predecessor of the petitioners herein for recovery of money which was decreed by Decree dated 20th July 1988. Meanwhile one Smt. Anandibai Raghunath Pangam while adopting the petitioner No. 1(c) as her adopted son by Deed of Gift dated 20th April 1987 gifted one plot, being plot ''D'' of her property Xir situated at Sanquelim Village and by another Gift Deed also gifted another plot, being plot ''B'' to the petitioner 1(b). On 3rd August 1991 said Madhukar Karpe expired and he was survived by the present petitioners as his legal representatives. Some time in 1993 the respondent herein filed Execution Application No. 7/93/A for execution of the decree passed on 20th July 1988 in Special Civil Suit No. 134/84/A. In the said execution proceedings the respondent herein sought to attach the said plots ''B'' and ''D'' of the petitioners herein for the purpose of auctioning the same to appropriate the proceeds thereof towards the amounts due to the respondent from late Madhukar Karpe, on the ground that the said property belonged to the legal representatives of the deceased debtor Madhukar Karpe. Simultaneously the respondent also filed an application, being Civil Miscellaneous Application No. 15/96/A in the Executing Court to restrain the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/madhukar-sagun-karpe-deceased-...

petitioners herein from selling, mortgaging or creating any charge or in any manner disposing off the said plots ''B'' and ''D'' belonging to the petitioners. The same was objected to by the petitioners. However, the Executing Court by the impugned order allowed the said application and restrained the petitioners from selling, mortgaging or creating any charge or disposing off the said two plots till further orders. While allowing the said application, the Executing Court held that the decree-holder is at liberty to proceed against any other property of the judgment-debtor in the hands of legal representatives.

2. Shri V.P. Thali, the learned advocate appearing for the petitioners, while assailing the impugned judgment and order, submitted that the properties in respect of which the restraint order has been passed exclusively belong to the petitioner 1(c) and 1(b) and the right to the same has been derived by them from one Anandibai Raghunath Pangam and not as part of the estate of late Madhukar Karpe, and being so, the Executing Court had no jurisdiction to pass the impugned order restraining the petitioners from lawfully enjoying the said two plots. According to the learned advocate, the trial Court has acted with material irregularity in ignoring the fact that the two properties in respect of which the impugned order has been passed did not form part of the estate of the deceased Madhukar Karpe and were acquired by the petitioners from a stranger.

3. Shri G.V. Tamba, the learned advocate appearing for the respondent, on the other hand, submitted that the Executing Court after considering the materials on record has passed the appropriate order and was justified in restraining the legal representatives from disposing of the properties in question.

4. Undisputedly the records disclose that the properties in respect of which the respondent sought the relief of injunction against the petitioners were acquired by the petitioners by virtue of a Gift Deed dated 20th April 1987 executed by one Anandibai Raghunath Pangam, a copy of which was placed on record and the facts to that effect were clearly stated in the reply to the application by the petitioners filed before the executing Court. The impugned order does not disclose even a reference to the said Gift Deed or the fact regarding the same narrated by the petitioners in their reply, which clearly discloses total non-application of mind by the trial Court while deciding the matter. In any case once the documentary evidence is placed on record and it is not challenged by the decree-holder that the properties in respect of which restraint order was sought for were not acquired by the petitioners out of the estate of the original judgment-debtor Madhukar Karpe, the Executing Court clearly fell in error in imposing restraint on the petitioners in respect of the properties which were acquired by the petitioners from a stranger. No doubt no fault can be found with the observation of the executing Court to the effect that the decree-holder is entitled to proceed against any other property of the judgment-debtor in the hands of the legal representatives of judgment-debtor. However, in the instant case, there is nothing placed on record to show that the two plots in respect of which the restraint order was passed forms part of the estate of the deceased

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/madhukar-sagun-karpe-deceased-…

judgment-debtor. On the contrary the documentary evidence discloses that they did not form part of the estate of the deceased Madhukar Karpe. Being so, the petitioners are right in contending that the executing Court acted with material irregularity in imposing restraint on the properties belonging to the petitioners which were acquired by them from Anandibai and not from the estate of the deceased Madhukar.

5. In this view of the matter the impugned order cannot be sustained and is liable to be quashed and set aside. The revision application, accordingly, succeeds. The impugned order is, hereby, quashed and set aside. However, there shall be no order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/madhukar-sagun-karpe-deceased-…