



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

District: Jalgaon

WRIT PETITION NO.5977 OF 2023

1. Damodardas s/o Jamnadas Zaware
(died through his legal heirs)
- 1A. Narayandas s/o Damodardas Zaware,
Age: 68 years, Occu: Business,
R/o 148, Bhavani Peth,
Jalgaon, Dist. Jalgaon.
- 1B. Smt. Sarjubai W/o Damodardas Zaware (died)
since deceased petitioner no.1A is only
the legal heir of the deceased 1B.

.....PETITIONER
(Decree holder)

VERSUS

Vinod s/o Bansilal Tripathi,
Age: 50 years, Occu: Jotish Karyalaya,
R/o 149, Bhavani Peth,
Jalgaon, Dist. Jalgaon.

.....RESPONDENT
(Judgment debtor)

Mr. S. B. Yawalkar, Advocate for the petitioner
Mr. G. V. Wani, Advocate for respondent-sole

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : 21ST AUGUST, 2026
PRONOUNCED ON : 27TH AUGUST, 2026

JUDGMENT :- (Per Court)**1. Preface:**

While deliberating on the controversy arisen on account of variance between Judgment and Decree, the Honorable Supreme Court in a case reported at **2003 (1) SCC 197 (Lakshmi Ram Bhuyan Vs. Hari Prasad Bhuyan and ors.)** held that a Decree must be in conformity with the Judgment. That means, there must not be any variance between the operative part of the judgment and the decree. For that at paragraph No. 10 of the judgment, observed thus:

10. Certain provisions of the Code of Civil Procedure, 1908 may be noticed. Order VII Rule 1 CPC requires the plaintiff to give sufficient particulars of the relief, which the plaintiff claims. Order XX requires a judgment to contain all the issues and findings or decision thereon with the reasons therefor. The judgment has to state the relief allowed to a party. The preparation of decree follows the judgment. The decree shall agree with the judgment. The decree shall contain, inter alia, particulars of the claim and shall specify clearly the relief granted or other determination of the suit. The decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid. Rules 9 to 19 of Order XX are illustrative of contents of decrees in certain specified categories of suits. The very obligation cast by the Code that the decree shall agree with the judgment spells out an obligation on

*the part of the author of the judgment to clearly indicate the relief or reliefs to which a party, in his opinion, has been found entitled to enable decree being framed in such a manner that it agrees with the judgment and specifies clearly the relief granted or other determination of the suit. **The operative part of the judgment should be so clear and precise that in the event of an objection being laid, it should not be difficult to find out by a bare reading of the judgment and decree whether the latter agrees with the former and is in conformity therewith. A self-contained decree drawn up in conformity with the judgment would exclude objections and complexities arising at the stage of execution.***

In the case in hand, Petitioner's suit for eviction and possession came to be dismissed. Relief was granted only observing, '*It is declared that the disputed passage is meant for the access of inhabitants of Western block*'. While decree was prepared in Marathi, it was recorded as "असे ठरवून देण्यात येत आहे की, वादग्रस्त पैसेज हा पश्चिमेकडील ब्लॉकला लागून असलेला रस्ता पूर्ववत सुरू करावा."

14 years post the Decree, the Petitioner filed execution proceedings u/o XXI of the Civil Procedure Code 1908 against the respondent on the pretext that the disputed passage be restituted for usage.

The Executing Court observed that the Decree prepared in Marathi is not as per the operative part of the Judgment. That, the judgment has granted merely declaratory relief for which execution is not permissible, and even otherwise the execution was time barred. Hence the Petitioner is before this Court.

2. Rule. Rule made returnable forthwith. At the instance of the parties, the petition is heard for final disposal.

3. **Facts of the case:**

3.1 Petitioner filed Regular Civil Suit No.452 of 1993 against the respondent in the court of learned Civil Judge Junior Division, Jalgaon seeking following relief.

Suit reliefs:

(i) Possession of the suit property mentioned at paragraph No.1 of the plaint;

(ii) It be declared that the access for block standing at Western side of the suit property is through a 5 X 12 ft. passage.

3.2 Suit was partly decreed. Decree for eviction and possession of the suit tenement was refused. However, it was declared that the disputed passage was meant for the access of inhabitants of the Western block. Operative part of the

judgment at clause 3 reads thus: *It is declared that the disputed passage is meant for the access of inhabitants of Western block*.

3.3 Decree was drawn pursuant to the judgment which cited in Marathi as असे ठरवून देण्यात येत आहे की, वादग्रस्त पैसेज हा पश्चिमेकडील ब्लॉकला लागून असलेला रस्ता पूर्ववत सुरू करावा.

3.4 Challenge to the Judgment and Decree reached to this Court in Second Appeals. However, none of the appellate court interfered with the findings recorded by the Trial Court. Findings of the Trial Court hold the field even today.

3.5 On this backdrop, contending that the respondent have obstructed the access through the disputed passage, the Petitioner invoked Order XXI of the Civil Procedure Code 1908 for execution in the year 2018 vide Regular Darkhast (Execution Petition) No.560 of 2018.

3.6 The respondent opposed the application. Upon hearing the parties, learned Judge of the executing court pleased to reject the application. Hence the Petitioner is before this court.

4. Submissions:

4.1 Mr. Siddharth Yawalkar, learned advocate would submit that the reasoning applied by the Executing Court to reject the application is not correct.

4.2 He would submit that the Decree is not merely a declaratory decree. His thrust is on the the words used 'meant' and 'access' in clause No.3 of the operative part of the Judgment and Order passed in the suit.

4.3 According to Mr. Yawalkar, the term 'meant' coupled with the object – 'access' means the disputed passage is permitted for ingress and egress of the Petitioner, and hence the decree is purely executable.

4.4 His further submission is that the decree is absolutely in consonance with the judgment and order. That, the executing court erringly drew inference that there is difference between the judgment and the decree.

4.5 Last but not the least, Mr. Yawalkar submits that if execution is not allowed the in given set of facts, the decree shall be redundant. With this, learned advocate for the Petitioner prays to allow the Writ Petition.

4.6 Mr. Yawalkar relies upon judgments and orders reported at (i) *AIR 2011 SC 952 (Hari Ram Vs. Jyoti Prasad and ors.)*, (ii) *AIR 1945 Bombay 20 (Vyasacharya Madhavacharya and Ors. Vs. Daji Baba and Ors)*, (iii) *AIR 1973 SC 2065 (Parkash Chand Khurana Vs. Harnam Singh and ors.)* and (iv) *AIR 2007 SC 514 (Sankar Dastidar Vs. Smt. Banjula Dastidar and anr.)*.

4.7 Mr. Girish Wani, learned advocate for the respondent supports the finding and the reasoning recorded by the Executing Court. He submits that the executing court has rightly expressed that there is variance in the judgment and decree taking to the reduction of the verdict of the Court into Decree in Marathi.

4.8 Mr. Wani adds that apparently clause 3 of the operative part of the Judgment and Order is nothing but a declaratory decree, and in no case it gives rise to an execution within the meaning of Order XXI of the Civil Procedure Code 1908. With this, Mr. Wani prays to dismiss the Writ Petition.

5. Consideration:

5.1 I have heard both learned advocates for the respective parties. From the rival arguments, I framed following moot issues to answer:

- (i) Whether the Executing Court has gone behind and beyond the Decree?
- (ii) Whether the Decree is in conformity with the judgment?
- (iii) Whether the decree is an executable decree?

5.2 Decree follows the Judgment. Judgment speaks about the relief prayed in the plaint. As recorded above in the case of *Lakshmi Ram Bhuyan* (supra) by the Honorable Supreme Court, the Decree must be in conformity with the operative part of the judgment on which the Decree is passed.

5.3 In the case in hand, operative part clause No.3 issues declaration that the disputed passage is “meant” for “access” to the Western side of the block. Much stress has been given by Mr. Yawalkar on these two words. He submits that the word ‘access’ means ingress and egress. So also, ‘meant’ means entitlement. There is no reason to disagree with such arguments. However, still such declaration is merely a declaration simplicitor.

5.4 While the Judgment speaks thus, the Decree is passed in Marathi which says that the disputed passage be restituted for the use of the decree holder (असे ठरवून देण्यात येत आहे की, वादग्रस्त पैसेज हा पश्चिमेकडील ब्लॉकला लागून असलेला रस्ता पूर्ववत सुरू करावा.)

5.5 Order XX Rule 6 of the Civil Procedure Code 1908 clause (i) says that the Decree must be in accordance with the Judgment clearly specifying the relief granted or other determination of the suit.

5.6 An execution can not be sought for relief which was not even prayed in the plaint. The prayer is merely for a declaration. For seeking execution against breach of any prohibition, there must be a prohibitory decree i.e. an ancillary prayer for injunction must be coupled with the prayer for the declaration of a right. Declaration of right is one thing, while for execution against infringement of such right or for implementation of the declaration, a decree of injunction would be necessary.

5.7 This necessitates now to look into the Chapter VI of the Specific Relief Act 1963 which speaks about declaratory decree. It reads thus:

CHAPTER VI
DECLARATORY DECREES

34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

35. Effect of declaration. —A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

5.8 On conjoint reading of Section 34, 35 of the Specific Relief Act 1963, and Order XXI of the Civil Procedure Code 1908 it is manifest that a declaratory decree unclad of any coercive or directive command, can not be put in execution.

5.9 Mr. Yawalkar’s argument on the point of ‘meant for access’ that it itself has injunctive value needs to be looked from the perspective of Chapter VIII (Section 38 and 39) of the Specific Relief Act 1963, which read thus:

CHAPTER VIII
PERPETUAL INJUNCTIONS

38. Perpetual injunction when granted.—(1) *Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.*

(2) *When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.*

(3) *When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:*

—

(a) *where the defendant is trustee of the property for the plaintiff;*

(b) *where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;*

(c) *where the invasion is such that compensation in money would not afford adequate relief;*

(d) *where the injunction is necessary to prevent a multiplicity of judicial proceedings.*

39. Mandatory injunctions.—*When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.*

5.10 Going *litera legis* Section 38 and 39, the subject-matter execution which is lodged with a perception that the Decree in hand has an injunctive value, its executability depends upon whether any obligation is created by the Decree or not. No such obligation is created by the subject-matter Decree.

5.11 In the given circumstances, neither there is implied injunction nor applicability of the doctrine of intendment is satisfactorily established by the Petitioner. Execution is sought in the form of implementation of an injunction. Unless the decree was supported with a decree of injunction, such Decree stands deficit or inadequate. I have gone through the reliefs prayed in the Exhibit-1 of the suit i.e. the plaint. No relief is sought for any sort of injunction. Hence, in fact the suit itself is deficit of adequate and necessary prayer.

5.12 The Executing Court rightly observed that ascertaining Decree with the operative order of the Judgment does not mean that the Executing Court has traveled beyond and behind the decree. In view of above, I do not subscribe to the submission of Mr. Yawalkar that the Executing Court traveled beyond and behind the Decree while rejecting the execution petition.

5.13 The findings of the Executing Court as regards to the limitation issue are well reasoned. I came across the finding of the Executing Court that the Decree holder did not adduce any evidence or explanation as to why the execution was not filed within 12 years from the date of decree. Nothing

convincing is produced before this court to take exception to the finding of the Executing Court on the point of limitation.

5.14 In view of above, with due respect I record the judgments reported at *AIR 2011 SC 952* and *AIR 2007 SC 514* which speak about continuous cause of action, as are relied upon by Mr. Yawalkar won't be applicable to the case in hand.

I have no reason to disagree with the observations made by this Court in the case reported at *AIR 1945 BOMBAY 20*, but on facts I have held that the Executing Court has not gone beyond the Decree. In fact, in view of the law laid down by the Honorable Supreme Court in the case of *Lakshmi Ram Bhuyan* (supra), the Executing Court is justified in passing the impugned order. In the case of *Parkash Khurana* reported at *AIR 1973 SC 2065*, principle is laid down that identification of a party's right contingent to occurrence of an event does not make it declaratory. It is also held that existence of a provision for execution in the decree is not a condition precedent for executability of a decree. Such is not the case in hand.

Here the decree itself is deficit and inadequate to have any execution value and injunctive value. Hence, the last citation is also of no avail to the Petitioner.

6. For the reasons recorded above, I do not find any infirmity in the order passed by the Executing Court.

7. **Conclusion :**

From the above discussion, I have arrived at conclusion that no case is made out to interfere with the impugned order passed by the Executing Court. My findings to all the issues framed for consideration answer in negative. However, the Petitioner may take up such legal proceeding for appropriate relief to safeguard the right decreed by the Trial Court, as are permissible in law.

Hence I pass the following order.

ORDER

- I. Writ Petition stands dismissed.
- II. Rule stands discharged.

(AJIT B. KADETHANKAR, J.)