

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4396 OF 2015

Hajarabi Mohamad Hanif Qureshi And Ors. ... Petitioners

Versus

Zorabi Hassanbhai Patel And Ors. ... Respondents

**WITH
CIVIL APPLICATION (ST) NO. 19449 OF 2019
WITH
INTERIM APPLICATION NO. 1037 OF 2026
WITH
CIVIL APPLICATION (ST) NO. 19459 OF 2019
WITH
INTERIM APPLICATION NO. 5901 OF 2026
WITH
INTERIM APPLICATION NO. 1035 OF 2026
WITH
INTERIM APPLICATION NO. 1036 OF 2026
IN
WRIT PETITION NO. 4396 OF 2015**

Mr. Tejas Deshmukh a/w Mr. Onkar Somvanshi for the Petitioners.

Mr. Sugandh Deshmukh a/w Mr. Aniket Kanawade, Mr. Vaibhav Thorave
for Respondent Nos. 2(i)(a)(i) to 2(i)(a)(iii) and 1(c).

CORAM : SANDEEP V. MARNE, J.

DATE : 16 SEPTEMBER 2026.

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P.C.:

1) It is unfortunate that the present proceedings, filed by the heirs of the decree holder challenging the impugned order dated 29 August 1988 have remained pending in this Court for the last 38 long years. Though the proceedings are numbered as Writ Petition No. 4396 of 2015, the same were initially filed as a Revision Application, which was numbered as Civil Revision Application No. 634 of 1988. The Revision, which is converted into a Writ Petition, raises a challenge to the Order dated 29 August 1988 passed by the Executing Court (Third Joint Civil Judge, Senior Division, Pune) allowing the Application at Exhibit 114, preferred by Defendant No. 1B under Section 47 of the Code of Civil Procedure, 1908 (**the Code**) obstructing execution of the final decree dated 5 October 1972 passed in Special Civil Suit No. 87 of 1964.

2) By the impugned Order, the Executing Court has declared JD No. 1B to be the absolute owner of the theater property known as "Bharat Cinema" standing on land bearing C.T.S. No. 860, Bhawani Peth, Pune. The Executing Court has also declared JD No. 1B to be the owner, to the extent of 52/96th share in all the properties mentioned in the schedule of the Execution Application. The Executing Court has further declared that JD No. 1C is the lessee to the extent of 52/96th share in C.T.S. No. 860 and also to the extent of 11/96th share in all properties in execution. The Executing Court has clarified that the theater property known as "Bharat Cinema" cannot be the subject matter of execution. After giving these directions, the Executing Court has directed that the execution to proceed in respect of all properties,

except the theater property known as "Bharat Cinema" and the 63/96th share in C.T.S. No. 860, Bhawani Peth, Pune.

3) The case has a checkered history. Petitioners' predecessor Mohamad Qureshi filed Suit No. 87 of 1964 seeking partition of various properties, including *inter alia* the property at C.T.S. No. 860, Bhawani Peth, Pune. Zorabi Hassanbhai Patel was Defendant No.1 to the Suit, who filed written statement contending *inter alia* that the property bearing C.T.S. No. 860 was not in her possession and that lease was granted to M/s. A. V. Exhibitors. She did not however contend that the land bearing C.T.S. No. 860 was her exclusive property and was incapable of being partitioned. On 31 August 1966, the Trial Court passed a preliminary decree for partition, in which Zorabi was given 52/96th share in the suit properties and the Plaintiff and his three brothers were given 11/96th share each in the suit properties. On 25 June 1970, a Court Commissioner was appointed to physically divide the suit properties. On 5 October 1972, a final decree was passed directing sale of the suit property and for distribution of the sale proceeds.

4) It appears that the lessee constructed a cinema hall/theater on land bearing C.T.S. No. 860. The lease was due to expire in the year 1989. It further appears that Zorabi had mortgaged the land bearing C.T.S. No. 860 and the dues of Zorabi were apparently settled by Karimsaheb Kamble. Similarly, the lessee had also secured some loan from Gopaldas Sugandhi and mortgaged the theater as well as leasehold rights in respect of C.T.S. No. 860, in favour of Gopaldas

Sugandhi. A suit for redemption was filed by Gopaldas Sugandhi, in which decree was passed against the lessee and this is how Gopaldas Sugandhi purchased the theater as well as leasehold rights in respect of C.T.S. No. 860 in a Court auction in 1969.

5) Zorabi thereafter executed a Gift Deed in favour of Karimsaheb in the year 1982-83 and bequeathed all her properties including her share in C.T.S. No. 860 in favour of Karimsaheb. It appears that, in the year 1974, Gopaldas Sugandhi was in arrears of rent and therefore Karimsaheb filed Civil Suit No. 774 of 1974 against Gopaldas Sugandhi *inter-alia* for recovery of possession of the theater. The suit was compromised and Karimsaheb apparently purchased leasehold rights in the land, as well as the theater building from Gopaldas Sugandhi. This is how Karimsaheb started claiming (i) ownership rights in respect of superstructure of the theater, (ii) the leasehold rights in land bearing C.T.S. No. 860 and (iii) ownership of Zorabi's share in the land bearing C.T.S. No. 860.

6) Armed with the above claims, Karimsaheb filed Special Civil Suit No. 396 of 1984, *inter-alia*, seeking a declaration that land bearing C.T.S. No. 860 is in his exclusive ownership and that the partition decree does not bind him. His application for temporary injunction in the suit was rejected and even Appeal from Order No. 786 of 1987 was dismissed on 30 September 1987. Karimsaheb was however granted liberty to raise the issue of his rights in the execution proceedings.

7) In the above background, Karimsaheb apparently did not prosecute the Suit and instead filed an application at Exhibit 114 in the execution proceedings under Section 47 of the Code and sought a declaration that the partition decree was void *qua* land bearing C.T.S. No. 860 and sought omission of that land and structure from sale proceeds in execution. By impugned order dated 29 August 1988, the Executing Court has allowed the application preferred by Karimsaheb. Petitioners are aggrieved by the Order dated 29 August 1988 and have filed the present Revision Application, which is converted into a Writ Petition.

8) I have heard Mr. Tejas Deshmukh, the learned counsel appearing for the Petitioners and Mr. Sugandh Deshmukh, the learned counsel appearing for Respondent Nos. 2(i)(a)(i) to 2(i)(a)(iii) and 1(c). Since Respondent No.2, Karimsaheb and his legal heirs are the main contesting Respondents, most of whom are already represented by Mr. Sugandh Deshmukh, it is not necessary to keep the present proceedings pending any longer awaiting appearance on behalf of legal heirs of Respondent No. 1, as the proceedings have remained pending in this Court for the last 38 long years.

9) Perusal of the impugned order passed by the Executing Court would indicate that the following operative directions are given in the Order dated 29 August 1988:

1. It is hereby declared that J.D. No. 1B is the absolute owner of the theatre property known 'Bharat Cinema' standing on the C.T.S. No. 860 Bhawani Peth Pune,

2. It is hereby declared that J.D.No.1B is the owner to the extent of 52/96th share in all the properties mentioned in schedule of this execution.

3. It is hereby declared the J.D.No.1C is the lease holder to the extent of 52/96th share in the C.T.S. No. 860 and to the extent of 11/96th share in all the properties in execution.

4. The theatre property known as 'Bharat Cinema cannot be subject matter of this execution.

5. The execution to proceed in respect of other properties mentioned in schedule of this execution except the theatre Bharat Cinema 's properties standing on C.T.S. No. 860 and 63/96th share in C.T.S.No.860 Bhawani Peth, Pune.

6. No order as to costs.

10) From the above narration, it is clear that Karimsaheb essentially claimed rights in the land bearing C.T.S. No. 860 on three grounds. *Firstly*, he claimed ownership rights in respect of the structure "Bharat Cinema" on the strength of purchase of ownership rights in the theater from Gopaldas Sugandhi and M/s. A. V. Exhibitors through compromise in Small Causes Suit No. 774 of 1974. *Secondly*, Karimsaheb also claimed leasehold rights in respect of land bearing C.T.S. No. 860, again through compromise effected in Small Causes Suit No. 774 of 1974. *Thirdly*, Karimsaheb also claimed ownership rights *qua* share of Zorabi through Gift Deed executed by Zorabi in his favour. Though Petitioners question correctness of the said gift deed and contend that the same is an oral gift, that controversy need not detain this Court any further while deciding the Petition. For now, I proceed on the footing that there is a gift by Zorabi in favour of Karimsaheb.

11) By way of preliminary decree for partition, the Trial Court granted 52/96th share to Zorabi, while granting 11/96th share to the

Plaintiff and three other brothers. Therefore, so far as Plaintiff is concerned, the decree needs to be executed *qua* land bearing C.T.S. No. 860, to the limited extent of 11/96th share granted to the Plaintiff therein. Zorabi had her own 52/96th share in C.T.S. No. 860 therefore even if the gift of Zorabi is treated to be valid, what is acquired by Karimsaheb is only 52/96th share in land bearing C.T.S. No. 860. In my view, therefore, execution of gift by Zorabi in favour of Karimsaheb does not come in the way of Plaintiff executing the decree for securing his 11/96th share in land bearing C.T.S. No. 860.

12) So far as the superstructure on land bearing C.T.S. No. 860 is concerned, in my view, even if Karimsaheb may own the same, the same would not affect the ownership rights of Plaintiff in respect of 11/96th share in land bearing C.T.S. No. 860. Plaintiff can become owner of land bearing C.T.S. No. 860 *qua* his 11/96th share even if Karimsaheb may remain owner of the superstructure.

13) Similarly, in respect of the alleged leasehold rights of Karimsaheb in respect of land bearing C.T.S. No. 860, existence of such leasehold rights cannot defeat the Plaintiff's claim for ownership in land bearing C.T.S. No. 860 to the extent of his 11/96 share. While Plaintiff would become owner and lessor in respect of 11/96th share in C.T.S. No. 860, Karimsaheb can continue to be a lessee in respect of the land. Thus, both ownership rights of the Plaintiff as well as leasehold rights of Karimsaheb can co-exist harmoniously.

14) The Executing Court has correctly appreciated the above position. I do not find any error in any of the operative directions issued by the Executing Court. This is clear from the following:

- (i) So far as operative direction No.1 about absolute ownership of Karimsaheb in respect of theater property "Bharat Cinema" on C.T.S No. 860 is concerned, there appears to be no difficulty.
- (ii) Similarly, in so far as declaration that Karimsaheb is the owner in respect of 52/96th share (*of Zorabi*) in C.T.S. No. 860 is concerned, the same is acquired through alleged gift of Zorabi and therefore there can be no difficulty about the said direction.
- (iii) So far as the operative paragraph No. 3 of the impugned order is concerned, the same declares JD No. 1C to be the leaseholder to the extent of 52/96th share in C.T.S. No. 860 and also 11/96th share in all properties in execution. So far as declaration of leasehold rights to the extent of 52/96th share in C.T.S. No. 860 is concerned, the same is acquired by JD No. 1C from Karimsaheb. So far as 11/96th share in C.T.S. No. 860 is concerned, it appears that legal heirs of the Plaintiff filed a pursis admitting grant of rights in respect of 11/96th share in favour of JD No.1C in C.T.S. No. 860. Therefore, there appears to be no difficulty even *qua* operative direction No. 3 of the impugned order.
- (iv) The Trial Court has rightly excluded the property known as "Bharat Cinema" from the subject matter of execution in

operative direction No. 4 since Karımsaheb was the owner of the superstructure.

- (v) Direction No. 5 directs that the execution shall proceed in respect of other properties mentioned in schedule of the Execution Application except the theatre 'Bharat Cinema' and 63/96th (52/96 + 11/96) share in C.T.S.No.860 Bhawani Peth, Pune.

15) So far as Plaintiff's brothers are concerned, who had not given up any rights *qua* their 11/96th shares in C.T.S. No. 860, operative paragraph No. 5 of the impugned order specifically permits continuation of execution proceedings and what is excluded is only "Bharat Cinema" property standing on C.T.S.No. 860 as well as 52/96th (+) 11/96th share in the land bearing C.T.S. No. 860.

16) From the above position, I do not find any error being committed by the Executing Court in passing the Order dated 29 August 1988. The Petition is thus devoid of merits it is accordingly **dismissed**. Rule is discharged. It is however, clarified that the execution proceedings shall continue as directed in operative paragraph No. 5 of order dated 29 August 1988.

17) In view of dismissal of the Writ Petition, the pending Civil Applications and Interim Applications do not survive and hence stand **disposed of**.

[SANDEEP V. MARNE, J.]