

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.65 OF 1999 WITH
CIVIL APPLICATION NO.821 OF 1999

1. Devidas Ramdas Patil,
Age 47 years, Occu. Agril.,
2. Lala Ramdas Patil,
Age 36 years, Occu. Agri.,
3. Sau. Meera Devidas Patil,
Age 33 years, Occu. Agril. & service,

All R/o Talvel, Taluka Bhusawal, ... APPELLANTS
District Jalgaon. (Original Plaintiffs/
Decree Holders)

VERSUS

1. Chaitanya Kashinath Patil,
Age 40 years, Occu. Service,
R/o Kamal Niwas, Tagore Nagar,
District Jalgaon.
2. Pandharinath Mahadu Patil,
Age major, Occu. Agril.,
R/o Talvel, Taluka Bhusawal,
District Jalgaon

... RESPONDENTS

.....
Shri S.P. Shah, Advocate holding for
Shri J.R. Shah, Advocate for appellants
Shri V.R. Dhorde, Advocate holding for
Shri R.N. Dhorde, Advocate for respondent No.2
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 12th February, 2015.

ORAL JUDGMENT:

1. This Appeal from Order has been filed by the original plaintiffs - decree holders, in whose favour Special Civil Suit No.347/1994 was decreed by the Civil Judge, Senior Division, Jalgaon. The suit was brought against present respondents No.1 and 2 and the suit came to be decreed against both the respondents. The suit was decreed to following effect :

- 1) Suit is decreed with costs.
- 2) Defendant No.1 is hereby directed to execute the sale deed of the suit land in favour of plaintiffs in term of agreement dated 31.12.1993.
- 3) Plaintiffs are directed to deposit balance amount of consideration of Rs.4,01000/- in the Court within 3 months from the date of this order and then to proceed for execution of the sale deed from defendant No.1.
- 4) Defendants No.1 and 2 are directed to make over possession of the suit land to the plaintiffs on executing sale deed by defendant No.1.
- 5) Plaintiffs are at liberty to get executed the

sale deed in execution proceeding in case, defendants No.1 and 2 fail to execute the sale deed and handover possession of the suit land to plaintiff.

2. It appears that, the appellants deposited Rs.4,01000/- in the Court. The respondent No.1 moved the Court for execution vide Darkhast No.51/1998 claiming that he is ready to execute the sale deed. It appears that, the respondent No.2 filed First Appeal No.35/1998 in this Court challenging the original decree, and as per order dated 12.2.1998, interim stay to the possession was given in favour of present respondent No.2 subject to condition of filing affidavit that he will not create third party interest.

3. In the trial Court, appellants, although they had deposited the amount, resisted the request of the respondent No.1 for execution of the sale deed. It was claimed that, respondent No.2 cannot file execution and stay in favour of respondent No.2 is there and sale deed and handing over of possession should take place at the same time. After hearing the parties, the trial Court passed orders on 13.8.1998 holding that there was no stay to execution of sale deed and rejecting

contentions of appellants directed parties to file draft sale deed. Respondent No.1 filed Draft to which appellants objected that it is not as per agreement. Executing Court found that no specific discrepancies were shown, and passed the impugned order dated 21.9.1998, directing that the sale deed be executed. The present Appeal from Order was filed against this order dated 21.9.1998 of the Civil Judge, Senior Division, Jalgaon.

4. Learned counsel for the appellants is submitting that the First Appeal No.35/1998 filed by respondent No.2 after enhancement of jurisdiction, has been transferred to the District Court and it is pending there. According to him, appellants are not sure as to when the matter would get decided and are apprehensive that whether or not they will get possession. He submits that, the execution of sale deed and handing over of possession should have been simultaneous. He, however, accepted that, after impugned order was passed, sale deed actually has been executed.

5. Respondent No.1 was served but did not remain present. Learned counsel for respondent No.2 submits that, nothing survives in the appeal as the sale deed is already

executed.

6. The question is:-

Whether the impugned order
is correct, legal and proper ?

7. The present appeal is against the impugned order dated 21.9.1998. The prayer of the appeal does not seek setting aside of the order dated 13.8.1998, by which objections raised by the appellants were rejected by the Executing Court. Vide orders dated 13.8.1998, the Court had directed submitting of draft sale deed for being finalised for execution. The draft sale deed was filed by respondent No.1 and the appellants filed say to the same, raising general contentions that the same was not as per the agreement. The trial Court found that it was surprising that no specific discrepancy between the agreement of sale and the draft was brought on record. As such, the trial Court passed the impugned order. The trial Court directed appointment of Court Commissioner, who was to execute the sale deed on behalf of the Court. The appellants are unable to point out any illegality in the impugned order dated 21.9.1998. The order appears to be

correct, legal and proper.

8. There is no substance in the Appeal from Order. The appeal stands dismissed.

9. In view of dismissal of the Appeal from Order, Civil Application No.821/1999 also stands dismissed. Interim stay granted on 24.1.2001 stands vacated.

(A.I.S. CHEEMA, J.)