

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

WRIT PETITION NO.3574 OF 2014

Rajendra s/o Manga Nikumbh
Age 48 years, Occu.Business,
R/o 21, Khandesh Mill Colony,
Ring Road, Jalgaon

..Petitioner

Versus

1. Baburao s/o Bhikanna Naidu,
died, through L.Rs.
- 1-A. Kum.Sharmishtha Baburao Naidu,
Age 61 years, Occu.Household
- 1-B. Kum.Hemlata Baburao Naidu,
Age 58 years, Occu. Household,
Both R/o 118, Zilla Peth, Jalgaon,
Taluka and District Jalgaon
2. Ambadas s/o Fakira Sapke,
died, through L.Rs.
- 2-A. Smt.Sulbhabai w/o Ambadas Sapke,
through L.Rs.
- 2-B. Shri Vikas s/o Ambadas Sapke,
Age 51 years, Occu. Business
- 2-C. Shri Anil s/o Ambadas Sapke,
Age 48 years, Occu.Business
- 2-D. Sow.Rekha w/o Sunil Rokde,
Age 43 years, Occu. Household
- 2-E. Sow.Sadhana w/o Suresh Bhagwat,
Age 46 years, Occu. Household
- All R/o C/o Sulbhabai Ambadas Sapke,
Bhandarkar Len, Amalner, Taluka
Amalner, District Jalgaon
3. Smt.Kamlabai w/o Manga Nikumbh,
died, through L.Rs.

- 3-A. Shri Vasant s/o Manga Nikumbh
died, through L.Rs.
- 3-B. Shri Ratan s/o Manga Nikumbh
Age 51 years, Occu.Business
- 3-C. Shri Yuvraj s/o Manga Nikumbh
Age 41 years, Occu.Business
- All R/o 21, Khandesh Mill Colony,
Ring road, Jalgaon
- 3-D. Sow.Sindhubai w/o Bhaskar
Bhadane, Age 51 years,
Occupation Household
R/o Near Municipal High School,
Pimprala, Taluka and District
Jalgaon
- 3-E. Sow.Indubai w/o Parshuram Jadhav,
Age Major, Occu.Household
R/o Khajamiya road, Ganesh colony,
Jalgaon, Taluka and District
Jalgaon
- 3-F. Sow.Laxmibai w/o Sadashiv Raut,
Age 46 years, Occu. Household
- 3-G. Sow.Shakuntala w/o Madhavrao
Raut, Age 37 years, Occu.
Household,
Both R/o Sainath Nagar,
Kadappa road, Nashik,
Taluka and District Nashik
4. Manga Shravan Nikumbh (died)
since above respondents No.3-A
to 3-G are the legal representatives
of recently dead respondent, no
necessity to bring them on record
again

..Respondents

Mr P.N.Kutti, Advocate for petitioner
Mr Girish Rane, Advocate for respondents 1-A and 1-B

CORAM : N.W. SAMBRE, J.

DATE : 10th March 2015

PER COURT

1. Petitioner – Judgment Debtor filed an application Exh.21 in Regular Darkhast No.585/2013 initiated by the respondents-landlord based on the decree for possession passed by the Civil Court on 30th September 1982 in Regular Civil Suit No.485 of 1976.
2. The said judgment was upheld up to High Court.
3. In the execution proceedings by the application Exh.21, the petitioner – tenant who is a judgment debtor has come out with a case that the land in question was given on lease to the decree holder by the State Government and lease has come to an end, as such decree is void and inexecutable. According to him it is open for him to raise the said issue at the time of execution proceedings and has placed reliance upon the judgment of Orissa High Court in the matter of **Radhi Dei and others Vs. Lalit Bihari Mohanty**, reported in **AIR 1991 Orissa 36**. In support of said contention, he has relied upon paragraph 7 of the judgment to canvass that it is open for the judgment debtor to raise an objection to the ownership of the landlord even in the execution proceedings.
4. According to petitioner, even though the tenant is not entitled to deny the title of the landlord, however, the said rule would not apply when the tenant is under the threat of eviction. According to him, the judgment of the Apex Court in the matter of **D. Satyanarayana Vs. P.Jagadish**, reported in **AIR 1987 SC 2192**

and judgment of this Court in the matter of **Stanley Parker Jones Vs. Bansraj Laltaprasad Mishra**, reported in **2001 (2) Mh.L.J.675** permit him to raise such objection at the stage of execution. Learned court below should pass appropriate order on such application instead of rejecting the same on technical grounds.

5. Learned Counsel for the respondents-landlord has invited attention of this Court to the order passed by this Court in Writ Petition No.5142 of 2011, wherein this Court at the request of petitioners in paragraph 6 and 7 has observed thus :

“6. At this stage Shri Borulkar, learned counsel for the petitioners, states that the suit premise is a commercial premise, and the petitioners are running their business therein, and therefore, reasonable time be given to vacate the same. Shri Rane, learned counsel for the land-lord opposes the said request.

7. Taking into consideration the fact that the petitioners are running their business, at the suit premises, I grant six months time to the petitioners to vacate the said premises, subject to the condition that each of the petitioners submits an undertaking to this Court that they would vacate the suit premises by 28-02-2012 and that they shall not create third party interest or encumbrance over the suit premises, and shall pay the rent regularly. The undertaking shall be filed within two weeks from today.”

6. Learned Counsel for respondents further urged that once the stand of the present petitioner was appreciated in the civil suit, appeal

and in writ petition by this Court admitting the ownership of the present respondents, it is not open for the petitioner to turn around and say that the respondents lack title to the property, as the lease has expired. He would further urge that if the lease is expired, the consequences thereof will follow, however, it cannot be termed that the decree is not executable being void.

7. In addition to above, learned Counsel for the respondents-landlord would urge that past conduct of the petitioner disentitles him for the relief which is claimed in the present proceedings and has placed reliance upon observations made by this Court in Writ Petition No.5142 of 2011. According to him, the present petition lacs merits and is liable to be rejected.

8. If we analyse the contentions raised by the respective parties to the present petition, it is required to be noted that the petitioner has admittedly suffered a decree for eviction in Regular Civil Suit No.485/1976. The suit preferred by the respondent-landlord came to be dismissed on the ground that the notice served on the tenant was not in accordance with law.

9. In appeal, the decree came to be reversed and in writ petition decree passed by appellate Court came to be confirmed up to this Court. Consistently, petitioner in his defence has given admission of title of the respondents-landlord to the suit property. Now, in the execution, the same is said to be disputed on the count that the suit property is leased out to the respondents-landlord by the Government and lease is expired, as such the decree becomes void.

10. So far as the above referred contention is concerned, in my opinion, the petitioner is estopped from raising this contention at the time of execution of decree, particularly, if already the Courts have appreciated the pleadings and evidence of the parties. In the light of the stand that the petitioner had admitted the title of respondents-landlord and based on title there is adjudication by the Courts resulting into decree, which is confirmed up to High Court. As such, it will not be open for the petitioner to seek re-opening of the said issue in the execution proceedings, particularly when the same was not raised when it was available to the petitioner. The petitioner, as such, is estopped from raising such issue before the executing Court

11. One more aspect of which this Court must take note of is, the petitioner somehow tried to prolong the execution of decree, as could be worked out from the following facts:

(a) The suit was initiated on 21st November 1976 and was decided on 30th September 1982.

(b) Thereafter In appeal the District Court and this Court in writ petition have given findings in favour of the landlords.

(c) The respondents-landlord are agitating for their right and during the last round of litigation in Writ Petition No.5142 of 2011, this Court has noted the request of the petitioners therein that they be continued for a period of six months, provided the petitioners give an undertaking to that effect.

(d) In spite of passing of the said order by this Court in Writ Petition No.5142 of 2011, petitioners have continued in possession of the property without giving an undertaking as ordered.

12. In my opinion, said conduct of the petitioner also disentitles him for the relief claimed.

13. The order impugned dated 10th April 2014 passed by the Civil Judge, Junior Division, Jalgaon, below Exh.21 in Regular Civil Suit No.585 of 2013 does not call for interference. As such, the writ petition stands rejected.

14. Mr Kutti, learned Counsel for the petitioner urged that the stay ordered by this Court be continued for a period of four weeks. The request is opposed by learned Counsel for the respondents.

15. Having regard to the conduct of the present petitioner in Writ Petition No.5142 of 2011, which is reproduced herein above, I am not inclined to continue the stay. Request stands rejected.

(N.W. SAMBRE, J.)

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