

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

WRIT PETITION NO. 7222 OF 2015

Digambar s/o Vitthal Mete
Age 66 years, occup. Agriculture
R/o village Bharaj, Taluka Ambejogai,
District Beed

Petitioner/
J.D. No. 4/
Defendant

versus

01. Rajaram s/o Sambhaji Mete,
Age 64 years, occup. Agriculture,
R/o Village Bharaj, Taluka :
Ambejogai, District Beed

02. Bhagwan s/o Sambhaji Mete,
Age 62 years, occup. and
R/o as above.

03. Ram s/o Sambhaji Mete,
Age 59 years, occup. and
R/o as above.

Respondents/
Nos. 1 to 3-
Orig. D. H/
Plaintiffs

Mr. Rajendrraa S. Deshmukkh with Amol Joshi, Advocates for
petitioner

Mr. T. G. Gaikwad, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
24TH JULY, 2015

ORDER:

1. This is one more petition by judgment debtor, unsuccessful hitherto, purporting to be aggrieved by order passed on 03-07-2015 on Exhibit 256, order of even date on Exhibit-254 and consequential order issuing possession warrant in Regular Darkhast No. 5 of 2002 by executing court i.e. Civil Judge, Senior Division, Ambejogai.

2. Before dealing with writ petition, it would be pertinent to refer here itself to background of present petition. Writ Petition bearing number 3624 of 2011 had initially been moved by judgment debtor before this court contending that the decree has been rendered inexecutable with the change in circumstances. Said writ petition had been dismissed, letters patent appeal carried against the same too has faced dismissal by division bench on 01-03-2014 by observing thus;

“1. Heard

2. This appeal is presented by the judgment debtor challenging the order passed by the learned Single Judge thereby confirming the order passed by the lower Court rejecting objection application presented in execution proceeding.

*3. Regular Civil Suit No. 228/1981 presented by original plaintiffs-respondents herein claiming recovery of possession came to be decreed. Judgment and decree passed by the trial Court was subject matter of first appeal which came to be dismissed and thereafter second appeal presented at the instance of appellant herein-original defendant has also been dismissed. Application for special leave to appeal presented by appellant herein also been dismissed by the Apex Court. After losing the legal battle in all the Courts, appellant proceeded to raise objection during execution proceeding contending that description of the property so far as it relates to the property numbers is incorrect and as such decree is inexecutable. Objection raised by the judgment debtor has been turned down by the executing Court. **It is observed that the property can be identified by considering the boundaries mentioned in the suit***

and therefore the decree is executable. Learned Single Judge has confirmed the view adopted by the executing Court. We do not find any infirmity in the order passed by the learned Single Judge dismissing the writ petition presented at the instance of appellant/judgment debtor. Judgment debtor has successfully prolonged execution of decree and has kept away original plaintiffs-respondents herein from receiving the fruits of the decree.

4. *In view of the above, trial Court is directed to expeditiously dispose of execution proceedings and ensure execution of decree. Letters Patent Appeal is devoid of substance hence stands dismissed.*

5. *Pending civil application, if any, does not survive and stands disposed of."*

3. Thereafter, there was another writ petition bearing number 4141 of 2011 prompted at the instance of present petitioner filed by one Sanjay Jadhav who happens to be petitioner's son-in-law. Said writ petition had also failed. Writ petition No.2385 of 2015 had been moved against the order dated 20-11-2015 on miscellaneous civil application no. 19 of 2013 dismissing objection to execution of decree passed in regular civil suit no.228 of 1981. This court while dismissing said writ petition had observed as follows;

"3. The miscellaneous civil application was resisted by the decree holders by filing their say at Exhibit-11/B. It was contended by them that the contents of the application are incorrect and false. They also denied the contention that decree holders have no right in the property as appearing in the map under Exhibit-135/D and

those are contrary to the sketch map of the pleadings. They further refer to various applications as have been made from time to time by the relatives of judgment debtor and contend that this is yet another attempt to delay the execution of decree.

4. The executing court, vide order impugned had considered that Sanjay Dhondiram Jadhav, son-in-law of present petitioner/judgment debtor No. 4 had filed writ petition no. 4141 of 2011 for decision afresh on the objection application filed at Exhibit-164 in the execution proceeding and the same has been dismissed. Said Sanjay Dhondiram Jadhav purportedly transferred the suit property to Sunandabai w/o Digamber Mete wife of judgment debtor No. 4 i.e. present petitioner during the pendency of the execution proceeding. Sunandabai had filed application Exhibit-110 purporting to object to the execution petition. Her application has also been rejected on 06-07-2014. Sunandabai against rejection of her objection had been before this Court by filing writ Petition No.9372 of 2014. Said writ petition came to be rejected by this Court on 10-11-2014.

5. Present petitioner-Digamber had filed writ petition bearing No.3624 of 2011 raising similar objection to the execution of decree that the decree is not executable in view of the changed circumstances, the property cannot be identified. Said writ petition was rejected by learned Single Judge of this Court on 09-06-2011. Thereafter, present Miscellaneous Civil Application has been filed by the petitioner. Against order dated 09-06-2011 passed by the learned Single Judge of this Court, Letters Patent Appeal Stamp No.16657 of 2011 had been filed. The division bench of this Court under order dated 01-08-2014 dismissed the Letters Patent Appeal observing that the property can be identified by considering the

boundaries mentioned in the suit and therefore the decree is executable.

6. *The trial court appears to have taken stock of the entire situation and has considered that present application has been filed by judgment debtor No. 4 with a view to prolong the execution of the decree. It appears that execution is being sought in respect of the property claimed in the suit.*

7. *Taking into account aforesaid, objection as has been raised is unsustainable for, the decree has been passed in respect of the properties claimed in the plaint and execution in respect of the same has been sought. This is another attempt to delay and procrastinate execution of the decree.*

8. *As such, I am not inclined to exercise discretion vested in this Court, under Articles 226 and 227 of the Constitution of India. Writ Petition stands rejected. "*

4. It would further be pertinent to note that while deciding said writ petition, reference had been made to Exhibit 135/D in the pleadings advanced in respect of the same.

5. One more relative of the petitioner had filed writ petition no. 9372 of 2014, challenging the decree in regular civil appeal no. 92 of 1992 dated 29-09-2001. Said writ petition also met with failure. Learned single judge directed that the observations in letters patent appeal dated 01-08-2014 shall be taken into account by the executing court while deciding regular darkhast no. 5 of 2002.

6. The decree holder once again had been before this court under writ petition no. 5577 of 2015, on this occasion taking a plea that, survey number 77 under the decree is self acquired property. While rejecting writ petition on 17-06-2015, this court had observed that the executing court would not be able to go behind the decree. It is thereafter present applications have been filed and the orders passed thereon have been impugned in present writ petition.

7. Application Exhibit-256 had been moved, referring to that the decree is sought to be executed without giving any particulars and further refer to the subsequent events and transactions and accordingly purported to claim that the decree is not executable, contending that the properties referred to in the decree and application are not in existence.

8. Exhibit-254 had been moved to stay execution proceedings till disposal of other litigations as referred to in said application.

9. The executing court has rejected the applications by the orders impugned and has issued possession warrant on the very day i.e. 3-7-2015 which too is the subject-matter of challenge in this petition. The executing court has referred to that all the contentions which were appearing in the applications had already been turned down by the high court, including other courts save and except standing crop. The court has also referred to that

several applications have been moved by the petitioners. The executing court as such concluded that the application was not tenable and was filed with an intention to prolong the execution. So is the case in respect of Exhibit-254 wherein the executing court has observed that earlier, the judgment debtor had filed civil applications which were decided by said court and that there is no stay to the execution of the decree.

10. Mr. Deshmukh, learned counsel appearing for the petitioner – judgment debtor strenuously submits that the executing court ought to have given regard to the various occurrences in respect of decreed property and the one given in execution petition. He refers to several circumstances and particularly that with the change of consolidation record, the boundaries as have been referred to in the decree and ones appearing in executing petition cannot be said to be the same as those would not match. He further contends that Exhibit-256 is an application pursuant to section 47 read with Order XXI, rules 97 and 98 of the Code of Civil Procedure, 1908 and as such opportunity to adduce evidence ought to have been given. He, in order to support his submission, refers to Section 47 read with rules 97 and 98 under Order XXI of the Code of Civil Procedure, 1908, refers to a decision rendered by learned single judge on 16-12-2008 in writ petition no. 3486 of 2008 and companion petitions, and particularly relies on paragraphs no. 11, 12, 13, 14 and lays emphasis on paragraph 16 which reads thus;

“16. This Court while exercising power under Article 227 of the Constitution of India, ordinarily is concerned with the decision making process and not decision itself. The quasi-judicial authorities, the Courts subordinate to this Court are required to follow the procedure in relation to the case dealt with by them. In the view, I have taken leads me to remit the case back with some directions. Another reason for remittance undisputedly is disposal of the appeal by learned Divisional Joint Registrar, Co-operative Societies, Nasik, which was filed under Section 152 by judgment debtor and has been disposed of on 19/3/08. ”

11. I am not sure that any analogy can be drawn from the facts and the observations in said case and can be extrapolated to the present case. Learned counsel for the petitioner submits, said judgment is being cited only to buttress his submission that an opportunity to lead evidence ought to have been given.

12. Mr. Gaikwad, learned counsel appearing for the respondents points out that similar contentions as had been raised under Exhibit-256 have already been taken in the preceding litigations which have been dealt with by the executing court as well as this court. He refers to the decisions by this court in series of writ petitions / letters patent appeals filed by present writ petitioner or on his behalf, such as, writ petitions no. 4113 of 2003, 8643 of 2009 3838 of 2010, 10600 of 2010, 3624 of 2011, 4141 of 2011, letters patent appeal no. 26 of 2010, letters patent appeal (stamp) no. 16657 of 2011, writ petitions no. 2385 of 2015, 3755 of 2015,

and 5577 of 2015. He submits that as a matter of fact, decree holders are seeking execution of the judgment and decree as had been passed by the civil courts and not anything further and the judgment debtor himself or at his behest other persons are trying to delay and defraud the execution of the decree. Petitions are being filed before this court on one pretext or the other. Judgment debtor or others at his behest are now seeking to adduce evidence after a period of fifteen years has lapsed after the decree has been passed. The intention underlying the applications is obvious. As a matter of fact, the decree has to be executed as has been passed by the civil courts.

13. Having regard to the duration of litigation and particularly after 2002 when execution petition had been filed, almost thirteen years have lapsed. There had been several attempts to execute the decree, however, it appears that the execution had not been allowed and made possible on one pretext or the other. The petitioner initially appears to have tried to dispute the decree which failed; subsequently, objections came to be raised through others which too failed. Thereafter, the petitioner had filed three writ petitions before this court, objecting execution of decree almost on all the occasions raising similar pleas. In one of the writ petitions, he had tried to raise grounds on merits that survey number 77 being his self acquired property can not be put to execution. The court had then observed that it is not for the court to go beyond the

decree. Needless to refer to that the decree will have to be executed in the terms it has been passed. A division bench of this court has already observed that the property can be identified while description of the same is given in the plaint. The execution of the decree as such should take place in accordance with the decree. Applications have been moved on the suspicion and apprehension or on the pretext that execution of decree would not take place in accordance with the decree passed by civil court. I do not think that the submissions and contentions being raised on behalf of the petitioner carry any weight in present scenario, particularly having regard to procrastination of execution of decree by judgment debtor and at his behest by others. I do not, therefore, deem it appropriate to exercise discretionary powers in favour of the petitioner.

14. Writ petition stands rejected.

SUNIL P. DESHMUKH, J.

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