

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.2 OF 2015

- 1) Bhanudas s/o Hiraji Dhamal,
Age-80 years, Occu:Agri.,,
- 2) Narayan s/o Bhanudas Dhamal,
Age-43 years, Occu:Agri.,
- 3) Eknath s/o Bhanudas Dhamal,
Age-41 years, Occu:Agri.,
- 4) Ambubai w/o Bhanudas Dhamal,
Age-75 years, Occu:Household,

All R/o- Nivdunge, Tq-Pathardi,
Dist-Ahmednagar.

...PETITIONERS
(Judgment Debtors)

VERSUS

Govind s/o Hiraji Dhamal,
Age-73 years, Occu:Agri.,
R/o-Nivdunge, Tq-Pathardi,
Dist-Ahmednagar.

...RESPONDENT
(Decree Holder)

...
Mr. L.V. Sangit Advocate for Petitioners.
Mr. M.R. Sonawane Advocate for Respondent.
...

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

DATE : 15TH JANUARY, 2015

ORAL ORDER :

1. Heard learned counsel for the Petitioners - original Judgment Debtors and learned counsel for Respondent - original Decree Holder.

2. The learned counsel for the Petitioners is pointing out that Regular Civil Suit No.190 of 1987 was filed by the Respondent for specific portion of land from Survey No.197 to the extent of 37 R which was claimed to be encroached. The decree passed on 13th July 1995 specified that the said 37 R land, more particularly shown in the map which was at Exhibit 35 was to be handed over. It appears that in the meanwhile one Regular Civil Suit No.209 of 1987 was also filed by the Respondent - original plaintiff claiming that the said 37 R land was under acquisition proceedings and the present Petitioners - Judgment Debtors

have received the compensation and the same should be deposited in the Court. It appears that subsequently the Regular Darkhast No.56 of 1997 was filed. The Darkhast has had different rounds of litigations where the matter was brought to this Court twice and sent back. Now the trial Court has gone into the matter and impugned order below Exhibit 57 was passed after recording evidence and hearing both sides. The Judgment Debtors have been contending that Decree is un-executable as they are not possession of the subject matter of the suit and that the same has been acquired by Government.

3. Learned counsel for the Petitioners is submitting that the trial Court has committed error as the claim of the Decree Holder is that land has been acquired and now according to the learned counsel for Judgment Debtors, the Decree Holder is trying to take possession from his other land.

4. Learned counsel for Respondent - Decree Holder is submitting that although there were land acquisition proceedings, the possession has actually continued to be with Judgment Debtors and so Decree Holder is entitled to get possession of the land as per Decree. According to him, even the amount directed to be paid in Regular Civil Suit No.209 of 1987 was not deposited.

5. Impugned Order shows that executing Court considered evidence and arguments to find that at no point Decree Holder, or the Judgment Debtor as encroacher has parted with the possession. It has been found that there is no evidence that Government has taken over actual possession. Going through the impugned order and looking to the controversy and the fact that the Decree Holder, even if he has to execute decree, would be entitled to execute it strictly as per the Judgment passed in Regular Civil Suit No.190 of

1987 specifying the 37 R land shown in the map Exhibit 35 in blue colour, there appears to be no substance in the dispute raised by the Petitioners. I do not find that there is any illegality or irregularity in the order passed by the subordinate Court. There is no reason to entertain the Revision Application.

6. The Civil Revision Application stands rejected, on stage of admission.

[A.I.S.CHEEMA,J.]

asb/JAN15