

of possession of property out of C.T.S. No. 1689. Darkhast is filed in pursuance of compromise decree passed in Regular Civil Suit No.54 of 1976. As per the compromise decree dated 21/09/1981 passed in Regular Civil Suit No. 54 of 1976, the Decree Holders ought to have sought possession as per the compromise terms. However, instead of claiming possession as per the compromise decree, the Decree Holders are claiming possession of portion of C.T.S. No.1689. In view thereof, the Executing Court cannot go behind the decree and issue possession warrant. He submitted that paragraph 1B of the compromise decree declares that the Decree Holders are owners of southern portion admeasuring 6.35 meters in length x 2.45 meters in width of C.T.S No. 1689 and that the Judgment Debtors No. 1 & 10 are directed to hand over vacant and peaceful possession of that area to the Decree Holders. However, instead of claiming possession of this area, the Decree Holders are claiming possession of southern portion of C.T.S No. 1689 which is contrary to the compromise decree. In view thereof, heirs and legal representatives of the Judgment Debtor No.1 and Judgment Debtor No. 10 filed application Exhibit 185 praying for not to issue possession warrant.

4. On the other hand, Mr. Shah supported the impugned order. He submitted that Regular Civil Suit No. 54 of 1976 was decreed in terms of compromise decree arrived at between the parties. In C.T.S. No. 1689, there is a wall which divides the suit

property into 2 parts i.e. southern and northern. The compromise provides that northern portion of C.T.S. No. 1689 will go to the share of the defendants and southern portion will go to the share of the plaintiff. He, therefore, submitted that the learned trial Judge has rightly rejected the application and ordered issue of possession warrant.

5. Mr.Shah submitted that the Judgment Debtors raised objection that Darkhast was not filed within limitation. The learned trial judge rejected the application. Aggrieved by that decision, Writ Petition No. 8452 of 2012 was instituted in this Court. The said Petition was dismissed on 20/11/2012. In paragraph 2 of order dated 20/11/2012, it was noted that original plaintiffs were declared as the owners of the southern portion admeasuirng 6.35 meters in length and 2.45 meters in width. After considering the material on record, this Court held that Execution Petition was filed within 12 years from 1986.

6. He submitted that earlier Judgment Debtors No. 1 & 10 had instituted Writ Petition 5333 of 2013 raising the question as to whether property is identifiable or not. The learned trial Judge rejected the application. Aggrieved by that decision, Writ Petition was instituted in this Court. That Petition was rejected on 29/07/2013. Subsequently, Judgment Debtors filed application Exhibit 160 objecting to the execution of the decree on the ground

that decree could not be executed as no final decree proceedings have been filed. That was rejected by the learned trial Judge on 26/08/2013. Aggrieved by that decision Writ Petition No. 9134 of 2013 was instituted in this Court. Writ Petition was dismissed on 20/11/2013.

7. In paragraph 2 of order dated 20/11/2013, this Court noted that in C.T.S. No. 1689, there is a wall dividing the property into 2 portions i.e. northern and southern. By the said compromise, it was agreed that southern portion will go to the plaintiffs and northern portion will go to the defendants. This Court rejected the Petition by observing that the Executing Court held that objection raised by the petitioners revolves around the merits of the compromise decree and the Executing Court cannot go beyond the decree. Subsequently, sister of the Judgment Debtors instituted Writ Petition 2885 of 2014 in this Court challenging the possession warrant under Order 21 Rule 35 of C.P.C. That Petition was dismissed on 21/03/2014. While rejecting the Petition, this Court noted that the order deleting two sisters passed in 2006 and thereafter, execution proceedings proceeded further. It is only at the stage when warrant of possession was issued, the objection was raised. This Court, therefore, observed that petitioners would want to somehow or the other stall the execution of the decree.

8. I have considered the rival submissions advanced by the

learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 5, the learned trial Judge observed that compromise pursis Exhibit 84 was placed on record. Perusal of that pursis shows that plaintiff in that proceedings was declared to be the owner of the area towards southern side of C.T.S. No. 1689 admeasuring 6.35 meters in length and 2.45 meters in width. The learned trial Judge further observed that paragraph 4 of the compromise pursis also records that C.T.S. No. 1689 is bifurcated into 2 portions i.e. southern and northern and that it also shows that there is a wall standing between within 2 portions. The plaintiffs are declared to be the owner of the southern side and defendants No. 1 & 2 namely Judgment Debtors No. 1 & 10 are declared to be the owners of the northern side. Judgment Debtors No.1 & 10 were also expected to hand over possession on or before 15/08/1986. In view thereof, contention raised by the Judgment Debtors No. 1 & 10 that compromise pursis does not sufficiently identify property cannot be accepted.

9. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. No case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

10. At this stage, Mr.Tajane orally applies for continuation of

ad-interim order. Mr.Shah strongly opposes this application on the ground that by order dated 24/12/2014, this Court continued stay granted by the trial Court till 12/01/2015 and thereafter, stay is not extended. On merits also, he submitted that the Judgment Debtors No. 1 & 10 have stalled execution of decree which was passed in terms of consent terms and they were supposed to hand over possession on or before 15/08/1986. That apart, it is evident that the Judgment Debtors have raised various objections in the Darkhast proceedings which were turned down by the trial Court. Not satisfied with this, they instituted several proceedings in this Court which were also dismissed. I am therefore, satisfied that present proceeding is abuse of process of Court and also abuse of process of law. In view thereof, no case is made out for continuation of ad-interim order. Oral application made by Mr.Tajane is rejected. Order accordingly.

(R.G.KETKAR, J.)