

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.842 OF 2015

**Khashaba Bapurao Patil
since deceased through heirs and LRs'
Smt.Akkabai Khashaba Patil and ors. : Petitioners
versus
Mahadeo @ Baburao Savala Patil and ors. : Respondents.**

**Mr. Pratap Patil for the Petitioners.
Mr. Girish R Agrawal for the Respondents.**

**CORAM : R. M. SAVANT, J.
DATE : 02nd February 2015**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 15/12/2014 passed by the learned Civil Judge, Senior Division, Karad by which order the Application (Exhibit 219) for attachment of moveable properties belonging to the Judgment Debtor No.6/b came to be allowed.

2 The genesis of the Application (Exhibit 219) for attachment of the moveable properties belonging to the Judgment Debtor No.6/b is in the decree passed by the Trial Court which is dated 5/5/2009 in Regular Civil Suit No.48 of 2003. The said decree is in the following terms (English Translation) :-

(1) That the Defendants to remove the encroachment upon the public road shown in Exhibit-I, Schedule I within two months and make the public road open for use of the public.

(2) In the event, the Defendants do not remove the encroachment, then the Plaintiffs would be at liberty to file the execution proceedings to remove the encroachment.

Since the Defendants did not comply with the decree passed by the Trial Court, the Decree Holders filed an Application (Exhibit 39) for police aid to remove the encroachment committed by the Judgment Debtors Nos. 6(a) to 6(l). The said Application came to be allowed by the Executing Court by the order dated 13/4/2011. However, in so far as the legal representatives of the Judgment Debtor No.6 are concerned, the Trial Court observed that the strong contest put up by the LRs of Judgment Debtor No.6 itself shows that the encroachment on the disputed road is not removed by them and that a grave situation would arise in view of the old age of the Decree Holders. The Executing Court accordingly by its order dated 13/4/2011 directed the Police Inspector, Karad Taluka Police Station to provide police protection to the Decree Holders for removal of encroachment on public road which is the suit road mentioned in the said Regular Civil suit No.48 of 2003 on depositing necessary Police Bhatta by the Decree Holders in the Police Station. Thereafter further order came to be passed by the Executing Court on the applications Exhibits 100 and 104 filed by the Decree Holders by which order the District Superintendent of Police, Satara was directed to give required police aid to the Decree Holders for removal of all sorts of encroachment including the standing trees on the suit road. The Decree Holders were directed to pay the necessary charges in the

office of District Superintendent of Police, Satara or as per the directions of the District Superintendent of Police, Satara in the concerned Police Station. It is after the deposit of the required police charges that the District Superintendent of Police, Satara was directed to extend the police aid to the Decree Holders. Accordingly the police aid on two occasions i.e. vide Order dated 13/4/2011 and thereafter vide Order dated 15/6/2012 came to be granted to the Decree Holders. The Decree Holders have filed the instant Application (Exhibit 219) by which Application they have claimed the recovery of the amount of Rs.3877/- as also the amount of Rs.15,784/- spent towards the police aid, and an amount of Rs.6400/- for employing a JCB to remove the encroachment on the road in question. The Decree Holders in the said Application have also prayed for attachment of the moveable properties of the Judgment Debtor No.6/b for recovery of the said amount.

3 The Executing Court considered the said Application and by the impugned order has issued a warrant under Order XXI Rule 43 of the Code of Civil Procedure against the Judgment Debtor No.6/b for the attachment of moveable properties belonging to him after the Decree Holders provide the list of moveable properties belonging to the Judgment Debtor No.6/b along with its estimated cost and also after the payment of process fee is paid by the Decree Holders as required by law. The said order dated 15/12/2014 is taken exception to by way of the above Writ Petition.

4 The challenge to the said order dated 15/12/2014 is on the ground that since the Decree Holders have undertaken to pay the amount towards the police aid required for removal of the encroachment the Decree Holders could not claim the said amount from the Judgment Debtor No.6/b. In support of the said contention, reliance is sought to be placed on the Application (Exhibit 39) and the Application (Exhibit 100) wherein the Decree Holders have averred that they would pay the charges towards the police aid. This is the principal contention urged by the learned counsel for the Petitioner.

5 In my view, it is not possible to accept the said contention. It is required to be noted that the decree passed is of mandatory nature directing the Defendants to remove the encroachment from the public road. In view of the fact that the total encroachment was not removed, the cause for filing the Applications (Exhibits 39 and 100) arose for the Decree Holders. Merely because in the said Applications, the Decree Holders have mentioned that they are ready to pay the necessary charges for the police aid would not mean that the Judgment Debtors are absolved of their liability to pay the charges which are required to be paid for removal of the encroachment. It is required to be noted that liberty was granted to the Decree Holders to get the encroachment removed in the event the Judgment Debtors fail to do so. It is in view of the default committed by the Judgment Debtors that the Decree Holders had to file

the execution proceedings for removal of the encroachment. The statements made in the Applications (Exhibits 39 and 100) have to be considered in the context of the fact that unless the police bhatta charges are paid, the police aid would not be provided, as obviously the payment of the said charges cannot be postponed to a future date or on the happening of any event. Hence though the statements appear in the Applications (Exhibits 39 and 100), the same would not fasten the liability of the amount spent for removal of the encroachment on the Decree Holders.

6 In that view of the matter, the order impugned in the present Writ Petition whereby the Executing Court has directed attachment of moveable properties belonging to the Judgment Debtor No.6/b cannot be found fault with. No case for interference in the writ jurisdiction of this Court is therefore made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]