

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3749 OF 2015

Chandso Ajim Mahalakari (Since Deceased)]
through his legal heirs.] ... Petitioners

Versus

Nijam Dadu Mahalakari (Since Deceased)]
through his legal heirs and Ors.] ... Respondents

Mr. Prashat S. Bhavake for Petitioners.

CORAM :- M. S. SONAK, J.
DATE :- MAY 06, 2015

P. C. :-

1. This petition is directed against the order dated 16/03/2015 by which Civil Judge, Junior Division, Peth Vadgaon (Executing Court), has dismissed the Petitioners' applications at Ex. No.50 and Ex.51 objecting to the execution of decree on the grounds that the property which is the subject matter of the decree has not been described in accordance with the provisions contained in Order 20 Rule 9 of the CPC.

2. This petition concerns execution of Judgment and Decree dated 11/11/2008 made in Regular Civil Suit No.64 of 2001 (old Regular Civil Suit No.50 of 1985). In para 1 of the plaint, the suit

property has been described by specifying survey number, area as well as the revenue assessment. The same description is reflected in the Judgment and Decree made on 11/11/2008. In fact, in the application made by the Petitioners-Judgment Debtors invoking the provisions of Order 20 Rule 9 of the CPC, the Petitioners have stated the description of the suit property. In these circumstances and at such a belated stage, seeking to obstruct execution of a decree in a suit which was instituted in the year 1984, is nothing but abuse of the legal process.

3. It is pertinent to note that the Written Statement filed in response to the plaint has not been placed by the Petitioners on record of this petition. This was relevant because perhaps it might have revealed that in the Written Statement, Judgment Debtor has nowhere raised any dispute with regard to the description or identification of the suit property. Order 20 Rule 9 of the CPC provides that where a subject matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement of survey, the decree shall specify such boundaries or numbers. Significantly, the provisions contained in Order 20 Rule 9 of the CPC afford an option in the matter of description of the property which is subject matter of the decree. The description has to be such as is sufficient to identify the suit immovable property. In the present case, as noted earlier, the property has been described by means of numbers in the record of survey.

Besides, the area of suit property has also been stated for the purposes of identification. The numbers obviously correspond to the survey records which again contain detailed description of the property. Accordingly, there is absolutely no merit in the submission that the decree in question is inexecutable for want of description of the suit property in terms of Order 20 Rule 9 of the CPC.

4. Mr. Bhavake, the learned Counsel for Petitioners, placed reliance upon the case of *Nahar Singh Versus Harnak Singh*¹ in support of his submission that unless the property in question for which the relief has been sought for is identifiable, no decree can be granted in respect of the same. However, that was a case where the lower Appellate Court, after examining the materials on record, came to a positive conclusion that the agreement of which specific performance was applied for neither contained exact area of the land to be sold nor the boundaries thereof. Lower Appellate Court further found that no length or breadth of the land had been given and therefore there was no marker to pinpoint the place from which it was to be measured. Such is not at all the factual position in the present case.

5. As noted earlier, there is no material placed on record to indicate that the Petitioners had, at any time before the making of the decree, raised any serious dispute as to the identity of the suit property. Even otherwise, from the description of the suit property in the plaint, in the decree as also in the very application made by the

¹ 1996 (6) SCC 699

Petitioners, it cannot be said that the same is in any manner deficient to identify the suit property and execute the decree. Incidentally, the decree questions a document executed by the Petitioners dated 16/05/1983 in respect of the suit property. The document also contained the description of the suit property. In any case, since the Petitioners are parties to the said document, it hardly lies in their mouth to contend that the description of the property is insufficient for the purposes of identifying the same.

6. Accordingly, there is no reason to interfere with the impugned order. This petition is dismissed with costs assessed at Rs.5,000/- (Rupees Five Thousand Only). The Executing Court to ensure that such costs are paid by the Petitioners and further to proceed with the execution of the decree with utmost dispatch.

(M. S. SONAK, J.)