

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 620 OF 2008

Sitaram Dattu Rane
(Since deceased) Through L.Rs.

1. Narayan Sitaram Rane
Age: 70 years, Occu.: Agri.,
2. Bhagwat Sitaram Rane
Age: 60 years, Occu.: Agri.,
3. Girdhar Sitaram Rane
Age: 48 years, Occu.: Agri.,
4. Sudhakar Sitaram Rane
(Deceased Through L.R.s)
- 4a) Manohar Sudhakar Rane
Age: 45 years, Occu.: Agri.,
- 4b) Sadanand Sudhakar Rane
Age: 28 years, Occu.: Agri.,
- 4c) Smt. Kamalbai Sudhakar Rane
Age: 52 years, Occu.: Agri.
5. Premraj Sitaram Rane
(Deceased Through L.Rs.)
- 5a) Sandeep Premraj Rane
Age: 31 years, Occu.: Agri.,
- 5b) Hament Premraj Rane
Age: 27 years, Occu.: Service

All above mentioned petitioners are
R/o Bhalod, Tq. Yawal, Dist. Jalgaon.

6. Murlidhar Sitaram Rane
(Deceased Through L.Rs.)

6a) Prashant Murlidhar Rane
Age: 28 years, Occu.: Service,

6b) Prashant Murlidhar Rane
Age: 29 years, Occu.: Service,

Petitioner Nos.6a and 6b are
R/o Raj siddarth Society,
Room No.5, 1st Floor, B-Wing,
Morya Nagar, Virar (East),
Mumbai.

6c) Sow. Amita Ravindra Choudhari
Age: 23 years, Occu.: Service,
R/o 11, Tripurari Co-op. Housing
Society, Jagtap Mala,
Near Shri. Gajanan Maharaj Mandir,
Nashik Road, Nashik.

7. Shankar Yadav Zambre
(Deceased Through L.R.)

7a) Shashikant Shankar Zambre
Age: 63 years, Occu.: Agri.,
R/o Bhalod, Tq. Yawal,
Dist. Jalgaon.

..PETITIONERS

VERSUS

1. Bapu Bhika Wani
(Deceased Through L.Rs.)

1a) Asha Sudhakar Jariwale
Age: 57 years, Occu.: Household,
R/o c/o Ashok Jariwale,
Eye Hospital, Mahajan Peth,
Barahanpur, Dist. Khandva (M.P.).

1b) Suresh Ramnath Anjanadkar
Age: 63 years, Occu.: Service,

R/o 273/11, D.B. Tupe Building,
Hadapsar, Pune.

1c) Pushpa Shantaram Wani
(Deceased)

1d) Shaila Dattatraya Pitale
Age: 57 years, Occu.:Household,
R/o c/o D.L. Pitale,
66, "Sharadha Niwas",
Shastri Nagar, Khandwa,
Dist. Khandwa (M.P.)

2. Bhagirathibai Digambar Chopde
(Abated)

3. Devram Shankar Zambre
Age: 70years, Occu.: Pensioner,

Respondent Nos.2 and 3 are
R/o Bhalod, Tq. Yawal, Dist. Jalgaon.

..RESPONDENTS

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Mr. S.A. Kulkarni, Advocate for petitioners.
Mr. R.F. Totala, Advocate for Respondent Nos.1a, 1b and 1d.

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CORAM : T.V. NALAWADE, J.
DATED : 17th OCTOBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of both sides heard for final disposal.

2. The petition is filed to challenge the order made on Exhibit 1 in Civil Application No. 20 of 2003 by Civil Judge, Junior Division, Yawal. This

application was filed in execution Regular Darkhast No. 13 of 2001. The application was filed for deciding the objection to the execution that the decree itself is null and inexecutable. The objection petitioner has filed the present proceeding. Both the sides are heard.

3. The suit was filed by the decree holder mainly for relief of possession of agricultural lands. It was the contention of the decree holder that defendant – present petitioner were not entitled to hold the possession as the decree holders were Inamdars of the land, there was grant of occupancy rights made in their favour by the authority under the Inam Abolition Act and they were entitled to get possession. It was also their case that present petitioners had come in possession only as agents of the decree holder and they had no other concern. The judgment debtor has filed objection to the execution of the decree by taking defence that the decree itself is not executable and the decree was obtained by playing fraud by the judgment debtor. This contention was continued after the death of judgment debtor by his legal heirs. The Executing Court has rejected the objection.

4. The submissions made and the record show that the dispute has checkered history. The proceedings were filed by both the petitioner and

respondent – decree holder for grant of occupancy rights under the Inam Abolition Act. As per the record, it was Hal Inam and one Baniya was Inamdar. Decree holders are contending that they are the successors of the said Baniya. Initially, the order was made in favour of the decree holder by the authority but then it was set aside and the matter was remanded back for reconsideration. At the same time, the present petitioners had started proceeding to claim rights under the tenancy Act. They had lost before the tenancy Court, before M.R.T. and then they had challenged the decision before the High Court.

5. In the suit filed by the present decree holder, compromise document was filed and under the compromise, present petitioners admitted that they were not the tenants, the grant of rights was made in favour of the plaintiff - decree holder and so they were ready to give up their possession. The right was given to the petitioners to purchase the land provided that they were ready to pay some consideration. The consideration was not paid and so execution proceeding was filed for getting possession by the decree holder.

6. Learned Counsel for petitioner is mainly relying on the decision given by the competent authority under Inam Abolition Act in revision. It

appears that after giving of compromise decree, revisions were decided and the authority held that the decree holder was not in possession on the relevant date and so it was not possible to make order in favour of the decree holder. The authority held that the decision given by the Civil Court cannot be used in favour of the decree holder as it was given during existence of stay order made by the High Court to the suit. While disposing of the revision, the authority held that the present petitioners were rendering services for which Inam was created and due to that, so long as they are rendering services, they can continue their possession. This observation is being used by the petitioners in the present proceeding which were made even after giving of compromise decree. Here only it needs to be observed that the authority has also observed that in view of the change in circumstances, nobody is rendering services.

7. The learned Counsel for petitioner submitted that in view of the stay which was operating to the proceeding, Civil Court could not have made decree on the basis of compromise. He placed reliance on one reported case **1967 SC 1386 (*Mulraj Vs. Murti Raghunathji Mahaaraj*)**. The facts of the reported case were different and it was in respect of execution proceeding. In the present matter, stay to the proceeding was obtained by the defendants of the suit and they themselves were admitting the claim as

plaintiff in the suit. As per the submissions made and the record produced, it can be said that the proceeding in which the stay was granted by this Court was withdrawn by the present petitioner subsequently. So, it is not open to say that compromise could not have been made and civil Court could not have given decree. Decree is self explanatory, mentioning the submissions made for judgment debtor for getting compromise decree.

8. Other submission is made by the learned Counsel for petitioner that Civil Court has given decree in respect of the matter which was not within the jurisdiction of the Civil Court. The learned Counsel submitted that when there is point of tenancy or point of rights which can be acquired under Inam Abolition Act, such points cannot be decided by the Civil Court. On this point reliance was placed on some reported cases as *AIR 1954 SC 340(1) (Kiran Singh and Others Vs. Chaman Paswan and Others)*, *AIR 1991 SC 1094 (East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd.)*, *(2013) 10 SCC 136 (Jagmittar Sain Bhagat and Others Vs. Director, Health Services, Haryana and Others)*, *(2012) 1 SCC 476 (Union of India and Others Vs. Ramesh Gandhi)*. He submitted that as the Civil Court has given compromise decree in the matters involving the point of tenancy and also point of rights of persons who were in possession on relevant date of Inam Abolition Act, the decree cannot be executed.

9. The aforesaid submissions made by the petitioner cannot be accepted. It is one thing that when the Civil Court decides as to whether a person is tenant or not and it is other thing when before the Civil Court the person himself admits that he was never a tenant in the suit land. In such case, it cannot be said that Civil Court is deciding the point of tenancy. Further, the tenant had failed to prove before tenancy court that he was tenant. Similarly, similar observations can be made in respect of rights which can be claimed as Inamdar or as a person who was in possession of Inam land on relevant date. At the cost of repetition it needs to be observed that right from the beginning it was the case of the decree holder that present petitioners were in possession as agents of Inamdar, the decree holder and they were not the tenants. In view of these circumstances, it was open to the defendant to admit the claim and give back the possession. There is nothing wrong if the decree of possession is given by the Civil Court. In view of these circumstances, there is no force in the aforesaid contentions.

10. When there is decree, though it is compromise decree, till the decree is there, it is not open to the petitioner to say that fraud was played on the judgment debtor for obtaining the decree. Such point could never have been decided by the executing Court in execution proceeding much less in the application filed under Section 47 of the Code of Civil Procedure.

Thus, on that point also there is virtually no scope to the judgment debtor.

11. What observations are made by the competent authority under the Inam Abolition Act and whether they are relevant for present purpose need not be considered. It can be said that the authority could have consider the admission given by the present petitioners before Civil Court that they were not the tenants, they were not Inamdar and they were giving back possession to the plaintiff as they were in a possession at the instance of the plaintiff. Such circumstance could have been considered. Here only it needs to be observed that the decision of the executing Court or the handing over of the possession to decree holder will not affect the right of government if the competent competent authority has come to the conclusion that the decree holder was never Inamdar and there is no question of grant of rights in his favour. It needs to be kept in mind that even while giving of the decision, in fact, there was no resumption of land. Thus the petitioners have admitted that they were in possession of the land at the instance of the decree holder and they had agreed to return back the possession to the decree holder.

12. In view of these circumstances, this Court holds that Executing Court has not committed any error in rejecting the application. In the result,

petition stands dismissed. Rule is discharged. Learned Counsel for petitioners prayed for stay to the order of this Court, same is refused.

(T.V. NALAWADE, J.)

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