

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

**Second Appeal No.229 of 2016
With
Civil Application No.3422 of 2016**

Manjulabai Devchand Raisingee. .. **Appellant.**

Versus

The Chairman,
Prabuddha Backward Class Housing
Society, Amalner & Another. .. **Respondents.**

Shri. Girish Rane, Advocate, for appellant.

Shri. A.R. Devakate, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 17th MARCH 2016

ORDER:

1) The appeal is filed by the judgment debtor of Execution Petition No.27/2006 which is pending in the Court of the Civil Judge, Junior Division, Amalner. Decree of possession is given in favour of respondent of some house property by allowing the counter claim made by the respondent, housing society. The suit filed by the present appellant, plaintiff (Regular Civil Suit No.140/1990), was dismissed. Both the sides are heard.

2) The suit was filed in respect of some portion of House No.390 situated at ward No.12 from Amalner, District Jalgaon. Size of the property was given as 15 ft x 20 ft and it was constructed portion. It was contended that adjacent to this property there was property of defendant, cooperative housing society and they were causing obstruction to the possession of the plaintiff over the suit property. The plaintiff had claimed the relief of declaration that she had become owner of the property and she had prayed for relief of injunction. She had contended that the property was gifted by one Pratap Shetji to her father-in-law and so she was the owner.

3) The suit was contested by the cooperative housing society, present respondent. It was contended that the suit property and adjacent property was given in possession of the defendant, cooperative housing society in the year 1987 by Social Welfare Officer Jalgaon. The defendants had denied that the property was belonging to one Pratap Shetji and he had given the property by way of gift to the father-in-law of the plaintiff. It is contended that the plaintiff somehow made encroachment over the suit

property in or about the year 1987, after taking possession of the property by the cooperative housing society and she has filed the case by making false contentions. It is the case of the society that possession of the plaintiff is of encroacher and she has no right to continue the possession. Counter claim was made to give possession of the suit property and more particulars of the property were given in the prayer clause 2 (A) by describing it as part of final Plot No.216.

4) Decree of possession was given in favour of the society by allowing the counter claim in the year 1996. Civil appeal filed by the present appellant was dismissed and this decision was confirmed in the second appeal by this Court. Then Regular Darkhast No.27 of 2006 came to be filed.

5) In the execution proceeding, present appellant filed application at Exhibit 21 and contended that the description of property mentioned in execution proceeding is not tallying with the property mentioned in the counter claim and so the execution proceeding is not

tenable. Application at Exhibit 45 was made by the present appellant to raise technical objection that separate bill of cost was not prepared in respect of the counter claim and so the execution proceeding cannot be filed on the basis of common decree made for the suit and the counter claim.

6) The trial Court dealt with the contentions made in both the applications on merits. In view of the provisions of Order 20 Rule 6(1) of the Civil Procedure Code the trial Court held that it was open to the decree holder to file execution petition on the basis of the decree prepared by the Court in the suit and the counter claim. It is held that there was no necessity to prepare separate bill of cost as in the decree itself the costs of the plaintiff and the costs of the defendant are mentioned.

7) For rejecting the application at Exhibit 21 the executing Court held that there was no discrepancy in the description of the property and the decree given in favour of the defendant society has become final. The Court has considered the size of the plot and the description of the

property given by both the sides. Description given by the plaintiff is also mentioned and the description given by the defendant shows that it was part of final Plot No.216. It is clear that the property was developed by the society and the suit property is part of that property. It is the case of the plaintiff that her father-in-law was working as watchman for some time and in that capacity initially he was occupying the suit property. Thus there is no force in the contention that the property described in the suit and the execution proceeding are different. The plaintiff has no ownership right, or right of any other kind and she cannot keep the possession in view of the nature of case put up by her which is decided finally. The first appellate Court has confirmed the findings given by the executing Court.

8) The suit was filed in the year 1990 and we are in the year 2016. It is clear that the present appellant is trying to protract the things and aforesaid two applications were filed only to protract the handing over of possession. No substantial question of law as such is involved. In view of the conduct of the appellant of

misusing the process of law this Court holds that she needs to pay cost of Rs.15,000/- to the respondent society. In the result, following order is made :-

9) The appeal stands dismissed. Civil Application No.3422 of 2016 stands disposed of. The appellant to pay compensatory cost and cost of Rs.15000/- (Rupees Fifteen Thousand only) to the respondent. The cost can be recovered by filing recovery proceeding if it is not deposited in this Court.

Sd/-
(T.V. NALAWADE, J.)

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