

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

CIVIL REVISION APPLICATION NO. 56 OF 2016

Abdul Rahim Abdul Samad Bazazir,
Age 46 years, occup. Business,
R/o Bawazir Manzil, Behind Imat Masjid, ...Petitioner
Yonus Colony, Aurangabad (original J.D.No.
1-c and 2)

Versus

- 1) Abdul Qayyum Bin s/o Sk. Hassan,
Age: 50 years, Occ: Business,
R/o Katkatgate, Nehru Nagar, (Ori. D.H.)
Aurangabad.
- 2) Abdul Samad Salam Bawazir,
Since deceased, through L.Rs.
- 2-a) Ali Abdul Samad Bawazir,
age: 53 years, Occ: Business,
R/o: Yanus Colony, Roshangate,
Aurangabad.
- 2-b) Mohammad Abdul Samad Bawazir,
Age: 48 years, Occ: Private Service,
R/o Nahid Nagar, Babar Colony,
Katkatgate, Aurangabad.
- 3) Safaraz Khan Chandkhan,
Age: 53 years, Occ: Tailor,
R/o: C.T.S. No. 11255, Maqsood colony,
Aurangabad.
- 4) Wahed s/o Abdul Aziz,
Age: 37 years, Occ: Driver,
R/o: C.T.S. No. 11255, Maqsood Colony,
Aurangabd.
- 5) Hyderkhan s/o Sherkhan,
Age: 65 years, Occ: Rickshaw Driver,
R/o: C.T.S. No. 11255, Maqsood Colony,
Aurangabad.

- 6) Shaikh Farid s/o Gulam Rasool,
Age: 40 years, Occ: Driver,
R/o: C.T.S. No. 11255, Maqsood colony,
Aurangabad.
- 7) Abdul Razzak @ Pasha s/o Wahid,
Age: 43 years, Occ: T.V. Mechanic,
R/o: Roshangate, Maqsood Colony, ...Respondents
Aurangabad. (original J.D. No.1-a,
1-b, 3 to 7)

--

Mr. Ajeet D. Kasliwal, Advocate for applicant
Mr. Pramod F. Patni, Advocate for respondent no.1

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14th September, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith by consent of parties and heard finally.
2. Mr Kasliwal, learned counsel for applicant – original judgment debtor in regular darkhast bearing No. 231 of 2012 contends that rejection of his application Exhibit 27 in said regular darkhast by executing court (12th Joint Civil Judge, Junior Division, Aurangabad) under order dated 08-03-2016 is improper and incorrect and the same requires corrective exercise under the present civil revision application.
3. He submits that execution petition for want of proper description of the decreed property is not maintainable and

the decree, as such, would not be executable. He submits that since said regular darkhast does not refer to the boundaries of the properties, the property cannot be identified for delivery of possession. He submits that the decree has been passed by the trial court in respect of properties described in plaint paragraph 1A and 1B. He further contends that execution of decree has been sought in respect of only a portion admeasuring 30 ft x 27 ft. of a property whereas no such specific reference is made in respect of other property under the decree. He submits that the executing court while considering Exhibit – 27 had been oblivious of that execution is not claimed in respect of the properties decreed, since it does not contain proper description of the property decreed. This aspect has not been appreciated at all by the executing court. According to learned advocate, as such, for want of proper description, the property would be unidentifiable and thus, the execution petition is liable to be dismissed.

4. In order to buttress his submissions, learned counsel Mr. Kasliwal purports to take support of judgment rendered by the supreme court in the case of *Pratibha Singh and another vs. Shanti Devi Prasad and another*, reported in *AIR 2003 SC 643*.

5. Perusal of the judgment relied on, would show that the decree in said case was in respect of immovable property, however, it was not definitely identifiable and in such circumstances, the supreme court considered that reference can be made to section 47 or section 152 of the Code of Civil Procedure, 1908, depending upon facts and circumstances of the case and as such, direction came to be issued to executing court to identify the property. Learned counsel submits that, in present case, the executing court should have issued proper directions to the decree holder for taking necessary corrective action.

6. Mr. Patni, learned counsel appearing on behalf of respondent no.1-decree holder, on the other hand, contends that the issue with regard to identification of property had never been raised and the decree has been passed in accordance with description as is appearing in the plaint. He further refers to position that the plaint describes properties by giving dimensions, boundaries as well as C.T.S. and municipal house numbers and as such, the property is sufficiently identifiable. He submits, Exhibit – 27 itself has been lodged with a view to elongate execution of decree in the proceedings which were initiated way back in 2004. He

submits, when identity of the suit properties was not in question during the suit proceedings, the issue of identity cannot now be raised in execution petition. The judgment debtor is estopped from claiming the property to be unidentifiable. He further submits that the judgment debtor should not bother, if there can be execution with the descriptions as appearing.

7. Mr. Patni further submits that there is sufficient compliance, particularly of Order VII, rule 3 of the Code of Civil Procedure. There was no objection to the identification of the property till execution proceedings were filed and that the objection application is not maintainable being not referable to any particular provisions of the Code of Civil Procedure and he further contends that the executing court has taken proper stock of the situation and has rightly rejected the objection.

8. Upon hearing learned counsel for parties and on perusal of the impugned order, it surfaces that the plaint in special civil suit no. 275 of 2004 refers to the property in the claim clause thus;

" CLAIM:- Suit for possession of C.T.S. No.11255 sheet No. 17 a plot admeasuring 30' x 27' situated at Roshan Gate, Maqsood

Colony, Aurangabad and property C.T.S. No. 11255 sheet no. 17 bearing M. No.4-11-38 & 4-11-39, situated at Maqsood Colony, Aurangabad, and for mesne profit. "

and to the property in paragraph no. 1 as follows;

" 1) Description of the property :

A) A plot, part of the property C.T.S. No. 11255 sheet No. 17 Municipal No. -4-11-38 and 4-11-39 total admeasuring 20' x 30', a constructed house consisting of three room, kitchen and W. C. and bounded as to the East : Karim Colony Road, to the West : House Pashu, to the South: House of Hafiz and to the North : House of Pasu situated at Maqsood Colony, Aurangabad

B) A plot from C.T.S. No. 11255 Sheet No. 17 admeasuring 30' x 27' and bounded as to the East : House of Chous, to the West : house owned by plaintiff, to the South : 20' Road and to the North : 10 Galli situated at Roshan Gate Maqsood Colony, Aurangabad. "

9. The decree has been passed in following terms as far as possession is concerned;

" 1. Defendants shall hand over the possession of the suit property (the description given in para no. 1-A and 1-B of the plaint shall form the part of the decree) to the plaintiff. "

10. It would further be pertinent to note that the decree passed by the civil court is stated to have been maintained up to the supreme court without dispute over the description/identification of the property.

11. The execution application refers to in clause no. 10 thus ;

" 10. *The mode in which the assistance of the Court Is required*

By issuing the warrant of possession in respect of C.T.S. No. 17 plot admeasuring 30 x 27 situated at Roshan Gate, Maqsood Colony, Aurangabad and C.T.S. No. 11255 sheet No. 17 bearing M. No. 4-11-38 & 4-11-39 situated at Maqsood Colony, Aurangabad, warrant for possession under order 21 rule 35 of the Code of Civil Procedure, and also issuing the warrant for recovery of amounting of Rs.90,000/-+ costs of suit and execution petition which comes to Rs.35,892=00 thus total amount of Rs.1,25,892=00 by issuing the warrant of attachment directing to attach the property of the J.D. No. 1 and 2 which will be pointed at the time of execution of the warrant for recovery of said amount for satisfaction of the money decree. ",

and the executing court has in the impugned order observed:

" 5. Read the application and say filed by the plaintiff. Heard the parties, admittedly, there is no issue of identification of the suit property. It is specifically numbered as CTS No. 11255 & Sheet No. 17 bearing M. No. 4-11-38 & 4-11-39 situated at Maqsood Colony, Aurangabad. Since the suit property is well described, subsequent plea in respect of J.D. that suit property is not described in view of Order 7 Rule 7 of Code of Civil Procedure cannot be considered. Whereas the present description can be considered within the provision Order 7 Rule 3 of CPC. Therefore the objection raised by the J.D. Is liable to be rejected. Thus following order.

ORDER

Application Exh. 27 is hereby rejected. "

12. Further, having regard to that it is not disputed that the decree has been passed with reference to the property referred to in the plaint and further that the execution petition has been filed pursuant to said decree, the decree would be required to be executed in accordance with the same.

13. Thus, taking stock of the situation, it cannot be said that application Exhibit – 27 would be able to raise in the face of aforesaid a dispute in respect of description of suit property.

14. Civil revision application is thus dismissed. Rule stands discharged.

SUNIL P. DESHMUKH,
JUDGE

pnd