

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

21 WRIT PETITION NO. 11917 OF 2016

MOTILAL SARDARMAL PORWAL DIED LRS JITENDRA
MOTILAL PORWAL AND OTHERS
VERSUS
ASHOKCHAND KUSHALCHAND BAKLIWAL AND
OTHERS.

Shri. Nitin V. Gaware, Advocate, for petitioners.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the learned Civil Judge, Senior Division, Ahmednagar on Exhibit 98 in Regular Darkhast No.192 of 2012. Heard learned counsel for the petitioners.

2) This is a glaring instance as to how the process of law is misused by the judgment debtor. There was a suit filed for redemption of mortgage by the original owner of house property having two storeys. He got the decree of redemption and he got further relief like recovery of the amount which was recovered in excess by the mortgagee. The suit was of the year 1948 and the

decree of redemption and possession was given in the year 1951. The execution proceeding was filed in the year 1951. It appears that the mortgagee had given his rights to some third party and he had even inducted some tenants. One Sardarmal who was original defendant No.31, was one assignee. This Sardarmal was claiming his rights through defendant Nos.27 and 31 as assignee of the rights. Decree was suffered not only by original mortgagee but also by all persons who were assignees of the rights of the mortgagee and the persons who were inducted in possession or part of the portions either as mortgagee or assignees of the rights of the mortgagee.

3) Persons who got rights from the mortgagor cannot have more or different right than the mortgagee. Once decree of redemption of mortgage is passed with relief of possession, everybody like mortgagee and the persons to whom rights are given by mortgagee are bound by the decree. They are bound to hand over possession of the property to the mortgagor. It appears that successfully the present petitioners, judgment debtors (legal representatives of original judgment debtor) protracted

handing over of the possession by taking one or the other objections. It is unfortunate that every time he got some relief and the executing Court was required to make inquiry again and pass new orders. As per the record, this must be at least 4th occasion for the legal representatives of the original judgment debtor No.2-A of the execution proceeding after the decree became final. The decree was challenged up to Supreme Court.

4) In Exhibit 98 present petitioner took following objections to the execution of the decree.

(i) The execution proceeding was filed on different orders made by the trial court and appellate Court. First decision was given by the trial Court in Special Civil Suit No.20/1948 and then some orders were made to modify the decision given by the trial Court by first appellate Court.

(ii) Along with execution proceeding, the decree holder had not filed original decree given in Special Civil Suit No.20/1948 though it is mentioned that record of Darkhast No.33/1962 which was initially filed was not available.

- (iii) During pendency of the execution proceeding, third party had appeared and he had taken some objections. As the objections taken and record produced by the third party, there was no specific order as against the present judgment debtor (present petitioner) to hand over the possession.
- (iv) The decree holder was not party to Execution Petition No.33/1962 though he had joined in appeal which was filed against one order made in the execution petition.
- (v) The property mentioned by the decree holder on the basis of the decree of Special Civil Suit No.20/1048 is not the property which the decree holder wants to get.
- 5) All the aforesaid contentions show as to how they were vague and as to how there was no force in any of the objections. In spite of this circumstance, this application filed in the year 2012 could not be decided due to various proceeding filed by the present petitioner in this Court.

6) A copy of decree given in the original suit is produced in the present matter, though it is typed copy. The record is sufficient and clear to show that the decree holder was entitled to get possession of entire property mentioned in the decree. The objections of the person like present petitioner that he has particular portion of that property and specific order needs to be obtained in that regard is very strange and which could not have been considered by any Court. Learned counsel for the petitioner first time submitted in this Court that the notice of the execution proceeding filed by the purchasers of the property from original mortgagee ought to have been given to the petitioner. This objection also is a strange objection. He referred to Order 21 Rule 16 of the Civil Procedure Code. This is again circumstance showing as to what extent the judgment debtor can go. That provision may be a provision for the benefit of owner or mortgagor but that provision is not in favour of the judgment debtor. When property is purchased under registered sale deed from the decree holder all rights would go to the purchaser, owner. It is really unfortunate that present petitioner could misuse the process of law and for all

these years he was successful in protracting the execution of the decree. This Court holds that such person needs to be saddled with heavy cost. There is no need to issue notice of the present proceeding to the decree holder as that will cause more harassment to him as he will be required to come to this Court from Ahmednagar and he will have to engage Advocate.

7) In the result, the petition is dismissed with cost of Rs.50,000/- (Rupees Fifty Thousand) to be paid to the Advocates Association of Bombay High Court, Aurangabad Bench.

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

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