

FARAD CONTINUATION SHEET  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10011 OF 2015

Shri Prabhakar Arjun Chavan (Deceased)  
through legal heirs

1a) Smt.Vasanti Prabhakar Chavan and Ors.

.. Petitioners

vs.

Shri Vasudeo Shankar Chavan

.. Respondent

Mr.S.V.Pitre for the petitioner

Mr.Drupad S. Patil for the respondent

**CORAM : K. K. TATED, J.**

**DATE : JULY 20, 2016**

**P.C.:**

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner org.defendant is challenging the order dated 24.4.2015 passed by Civil Judge, Junior Division, Karjat below Exhibit-15 in Regular Darkhast No.6 of 2012 appointing Court Commissioner to execute the decree passed by Civil Judge, Senior Division, Panvel on 19.10.2005 in Special Civil Suit No. 184 of 1998.

3 In the present proceeding, respondent plaintiff filed suit for specific performance and injunction against the defendants. That suit

was decreed by the Trial Court on 19.10.2005. Operative part of the said order reads thus:

**“ORDER**

- 1 The suit is decreed with costs.
- 2 The defendants are directed to secure the permission of sale from The Sub-divisional Officer, Panvel, within 3 months from the date of this order. Failing which, the commissioner will be appointed at the cost of the plaintiff of securing that permission.
- 3 Plaintiff is directed to deposit the balance consideration amount in the court after securing the permission of sale from the Sub-Divisional Officer, Panvel.
- 4 The defendants are restrained from creating third party interest in the suit property.
- 5 Decree be drawn accordingly.”

4 As the defendant failed and neglected to comply the judgment and decree passed by Trial Court the plaintiff filed Regular Darkhast No.6 of 2012. In that plaintiff made application below Exhibit-15 for appointment of Court Commissioner to take permission from the Collector under section 43 of the Bombay Tenancy and Agricultural Land Act, 1948 and to execute sale deed in his favour and hand over the possession of the suit property. That application was allowed by the executed court. Hence, the present Writ Petition.

5 The learned counsel for the defendant submits that the Trial Court failed to consider that in original decree dated 19.10.2005, court has not directed defendant to hand over the possession and or to

execute the sale deed in favour of plaintiff in respect of suit property. Hence, the order passed by executing court was beyond the decree passed in Regular Civil Suit No. 184 of 1998. Hence, same is required to be set aside.

6 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Writ Petition. He submits that as the defendant failed and neglected to comply with the judgment and decree passed by the Trial Court they preferred Execution Application No.6 of 2012. In that they filed application for appointment of court commissioner to apply Collector under section 43 of the Bombay Tenancy and Agricultural Land Act, 1948 to take permission and execute the sale deed and hand over possession. He submits that the said order is passed by executing court according to the judgment and decree dated 19.10.2005. Hence, there is no substance in the present Writ Petition and same be dismissed with costs.

7 It is to be noted that the Trial Court by judgment and decree dated 19.10.2005, decreed the plaintiffs suit which was for specific performance and for possession. Bare reading of the operative part as set out hereinabove, shows that Trial Court has decreed the plaintiffs suit in toto. Hence, order passed by executing court on 24.4.2015 for appointment of court commissioner to execute the decree including to make application to the Collector under Section 43 of the Bombay Tenancy & Agricultural Lands Act, 1948 and hand over the possession of the suit property to the plaintiff is within four corners of the decree dated 19.10.2005 in Special Civil Suit No. 184 of 1998. Hence, I do not find any substance in the present Writ Petition.

8 Writ Petition stands rejected.

JUDGE