

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10905 OF 2016

Shri Narendra Jayantilal Desai

.... Petitioner

versus

Smt. Nirmala Maganlal Doshi (Deceased)
& Ors.

... Respondents

Mr.Narendra J. Desai, Party in person.

Mr.Jay Shah & Ms Minal Parab & Mr.Ayaz Bilawala i/b. M/s
Bilawala & Co. for Respondents No.2, 4 to 6.

CORAM : R.G. KETKAR, J.

DATE : 14th OCTOBER, 2016

PC. :

1. Not on Board. At the request of Mr.Narendra J. Desai, party in person, taken up for admission.

2. Heard Mr.Narendra J. Desai, party in person and Mr.Jay Shah, learned Counsel for the respondents No.2, 4 to 6 at length.

3. By this Petition under Article 227 of Constitution of India, the petitioner, hereinafter referred to as defendant No.2, has challenged the judgment and order dated 30/08/2016 passed by

the learned Trial Judge, presiding over Court No.21 of the Small Causes Court, below Ex.31 in Execution Application No.532/15. By that order, the learned Trial Judge allowed the application made by the respondents, hereinafter referred to as plaintiffs, and reissued warrant of possession in respect of suit premises under Order 21, Rule 35 of the Code of Civil Procedure, 1908 (for short C.P.C.). Mr. M. R. Chaudhary, Bailiff was appointed to execute the warrant of possession against the defendants or any other person found in the suit premises by breaking open the lock, if suit premises is found locked.

4. Mr.Shah submits that in pursuance of the impugned order, the plaintiffs have taken possession on 27/09/2016. As far as the articles lying in the suit premises are concerned, he submits that inventory was made and the Executing Court has fixed the matter on 07/11/2016.

5. Mr.Desai submitted that the petitioner has instituted S.L.P before the Apex Court challenging the judgment and order dated 07/04/2015 passed by this Court in C.R.A.No.135/06 and the next date is 24/10/2016. He has invited my attention to the application made by the plaintiffs for execution of decree as also cause title of the application. He submitted that plaintiffs have

impleaded (1) Mahendra Atmaram Vora (2) Janardan Atmaram Vora (3) Doshi Sanghvi Builders, as plaintiffs No.8, 9 and 10, therein, who were defendants No.1(a) to 1(c). Even after amending the application, by deleting names of plaintiffs No.1 and 3, since deceased, Mahendra Atmaram Vora, Ghanshyam Atmaram Vora, Janardan Atmaram Vora and Doshi Sanghvi Builders are shown as plaintiffs. Plaintiffs have not explained as to how these defendants can be impleaded as plaintiffs. The application made by the plaintiffs under Order 21, Rule 11 of C.P.C. is liable to be dismissed in view of the provisions of Order 21, Rule 24 of C.P.C.

6. Mr. Desai submitted that plaintiffs have played fraud in obtaining decree of eviction against him. They have also obtained possession of the suit premises by playing fraud. He invited my attention to the decree passed by the appellate Court. He submitted that the appellate Court directed respondents No.1 to 3 (defendants No.1(a) to 1(c)) and respondent No.4 (defendant No.2), to hand over possession of the suit premises as described in the plaint. However, no material is produced on record to show that notice was issued to defendant No.1(a) to 1(c). As the decree is passed against defendants No.1(a) to 1(c) and also defendant No.2, they cannot execute the decree only against defendant No.2. In short, it is submitted that the plaintiffs have obtained the decree

by playing fraud and they have also obtained possession by playing fraud upon the Court.

7. On the other hand, Mr.Shah submitted that nothing survives in this petition as the impugned order is implemented and possession is taken.

8. I have considered the rival submissions advanced by the learned Counsel for the parties. Defendant No.2 has challenged the order dated 30/08/2016. By that order, the learned Trial Judge has reissued warrant of possession. It is not in dispute that on 27/09/2016, plaintiffs have executed decree and obtained possession. In view thereof, challenge to the impugned order does not survive as the order is implemented. In so far as articles lying in the suit premises are concerned, the executing Court has fixed the matter on 07/11/2016. It is open for the defendant No.2 to participate before the Executing Court in that regard. Subject this, no case is made out under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)