

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11023 OF 2016

Mrs. Hemlata Sunil Madye

...Petitioner
(Original Appellant)
(Original Obstructionist)

Vs

Mr. Sudhir M. Bhatt (since deceased)

1a. Pratik Sudhir Bhatt & Ors.

...Respondents

.....

Mr. Indrajeet Yadav for the petitioner.

Ms. Vasudha Narvekar for respondent nos. 1 and 2.

.....

CORAM : N.M.Jamdar, J.***Date : 14 December 2016*****Oral Order :-**

1. By this petition, the petitioner has challenged the concurrent judgments and orders dated 31 January 2011 passed by Small Causes Court, Mumbai, and the Appellate Bench of Small Causes Court dated 22 July 2016, whereby the obstructionist notice taken out by the respondent has been made absolute, and the appeal filed by the petitioner has been dismissed. Both the Courts have recorded the finding of fact that the petitioner has failed to show

any independent title of the suit property.

2. The sole contention advanced by the learned counsel for the petitioner is that the decree was obtained with collusion with the landlord without joining the original tenant as a party, and such decree is a nullity, and, therefore, it ought to not have been executed and the obstruction of the petitioner ought to have been allowed.

3. The petitioner has approached this Court under Article 227 of the Constitution of India. The parameters of power under Article 227 are well-established. The execution of decree need not be stalled at instance of any party, who has no right. The argument of decree being nullity on the ground the original tenant has not been found was not raised before the trial court. The original tenant has not raised any grievance regarding the execution of the decree. In this context, since the petitioner has approached the Court as an obstructionist, the learned counsel for the petitioner was called upon to demonstrate independent right in the suit property. No argument is advanced on that ground. Once the petitioner failed to demonstrate any right into the suit property, at the behest of the

petitioner the legality of the decree need not be considered, an argument which was perhaps open to the original tenant, who has raised no such grievance.

4. Therefore, I am not inclined to exercise the equitable jurisdiction vested in this Court under Article 227 of the Constitution of India. This petition is just an attempt to prevent the decree holder from enjoying the fruits of the decree. In these circumstances, no interference is warranted in the impugned order. The Writ Petition is accordingly rejected.

5. At this stage, the learned counsel for the petitioner seeks continuation of the ad-interim relief granted on 22 September 2016. Considering the facts and circumstances, only out of indulgence to the petitioner, the ad-interim relief is continued for a period of six weeks from today, on the same terms and conditions.

(N.M. Jamdar, J.)