

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STMP) NO.26420 OF 2015

Ashok Balwant Mantri	]
authorized trustee of Shri. Sidheshwar	]
Religious Temple, Mazgaon, Mumbai	]
400 033 and all are residing at 14,	]
Mantri House, Opposite Saraswat	]
Bank, S. V. Sohni Marg, Girgaum,	]
Mumbai- 400 004.	].. Petitioners

Versus

1. Smt. Taravati Harishkumar Chaurasiya	]
w/o late Shri. Harishkumar Chaurasiya	]
age 45, Indian Inhabitant of Mumbai,	]
Occu:- Housewife, residing at	]
Pachkalshiwadi, Opp. Kaiser Hind Mils,	]
Rambhau Bhogle Marg,	]
Cotton Green, Farebunder,	]
Mumbai- 400 033.	]

2. Shrinath Ramkrishna Chaurasiya	]
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2(a) Smt. Tulsibai Chaurasiya	]
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2(b) Sarojkumar Chaurasiya	]
heirs and legal representatives of	]
Defendant No.2, residing of	]
Pachkalshiwadi, Opp. Kaiser Hind	]

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| Mils, Rambhau Bhogle Marg, |] |
| Cotton Green, Farebunder, |] |
| Mumbai-400 033. |] |
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3. Sunil Sawardekar |
] |
| resident of Pachkashiwadi, Opp. |] |
| Kaiser Hind Mils, Rambhau Bhogle |] |
| Marg, Cotton Green, Farebunder, |] |
| Mumbai-400 033. |] |
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4. Satish Balwant Mantri |
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5. Ulhas Balwant Mantri |
] |
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6. Prasad Satish Mantri |
] |
| all are trustees of Shri. Sidheshwar |] |
| Religious Temple, Mazgaon, Mumbai |] |
| 400 033 and all are residing at 14, |] |
| Mantri House, Opposite Saraswat |] |
| Bank, S. V. Sohni Marg, Girgaum, |] |
| Mumbai-400 004. |] |
-].. Respondents

Mr. K. S. Patil a/w Mr. Rajeev S. Matkar, for the Petitioners.

Mr. M. S. Singh i/by Mr. A. K. Singh, for the Respondent No.1.

CORAM : R.M. SAVANT, J.
DATE : 25th JANUARY 2016

ORAL JUDGMENT

1. At the outset, the Learned Counsel for the Petitioners seeks deletion of the Respondent Nos.2 to 6 as in the context of the challenge raised in the above Petition they are formal parties. The said Respondents

are accordingly deleted at the risk of the Petitioners.

2. Rule, considering the nature of the challenge raised made returnable forthwith and heard.

3. The Writ Jurisdiction of this Court is invoked against the order dated 20.08.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order, the application Exh.17 for bringing the heirs of the original Respondent No.2(a) Smt. Tulsibai Chaurasiya on record came to be allowed and the said heirs were directed to be brought on record by amending the Appeal within three days of the said order.

4. It is not necessary to burden this order with unnecessary details having regard to the nature of the directions to be issued.

5. The Petitioners herein are the original Plaintiffs who had filed RAE & R Suit No.1260/4001 of 1987 for eviction of the Defendants to the said suit, which included one Smt. Tulsibai Chaurasiya who was the Defendant No.2(a) and her son one Shri. Sarojkumar Chaurasiya who was the Defendant No.2(b). The said suit came to be decreed by the Trial Court by judgment and order dated 05.03.1999. The Defendants it seems did not carry the matter further and the said eviction decree therefore

became final and binding. The Plaintiffs filed an application for execution of the decree. In the said execution proceedings, the Plaintiffs filed an application for warrant of possession to be issued. The warrant of possession came to be issued on 14.09.2009. Pursuant to the said warrant of possession, the Defendant Nos.2 to 6 handed over possession of the front portion of the suit premises being Shop No.21. However, the Respondent No.1 herein i.e. Smt. Taravati Chaurasiya obstructed the execution of the decree. This resulted in the Plaintiffs filing Obstructionist Notice No.983 of 2009 for removal of the obstruction of the said Smt. Taravati Chaurasiya on the ground that the said Smt. Taravati Chaurasiya being bound by the decree, as the same being passed against her mother and brother, could not obstruct the same. The said Smt. Taravati Chaurasiya i.e. Respondent No.1 herein opposed the said Obstruction Notice. It was her case that she is in exclusive use and occupation of a room admeasuring 12 X 6 sq.ft. of masonry wall cement shed. It was her case that she is residing along with her husband in the suit premises since the year 1979. It was her case that her husband had purchased the suit premises. However, it was her contention that the Sale Deed and other all documents relating to the room have been destroyed in the heavy rains of the year 2005. It was her case that the decree was passed in respect of Room No.21 which was a different premises than one which was in her

occupation. In her reply, she also referred to Suit No.1410 of 2009 which she had filed against the Plaintiff for injunction. She also referred to the fact that in the said suit, she had filed an application for injunction which came to be rejected and that she was directed to contest the execution proceedings that is how according to her she was contesting the present execution proceedings. The Executing Court in view of the stand taken by the said Smt. Taravati Chaurasiya framed the following two issues :-

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| “1. Does the obstructionist prove that she
has independent right, title or interest
in the suit premises ? | In the negative. |
| 2. Whether the Plaintiff is entitled to
remove obstruction caused by the
obstructionist ? | In the affirmative” |

The said issues were answered against the said Smt. Taravati Chaurasiya. The sum and substance of the findings of the Trial Court was that the said Smt. Taravati Chaurasiya did not have any independent right. The Executing Court also referred to her admissions, wherein she has admitted that her mother and brother were staying in the suit premises. The Executing Court therefore posed the question that when the mother and brother were residing in the suit premises how could she reside in the said premises with her husband. The Executing Court lastly observed that the decree passed against her mother and brother is binding upon her and

that she has failed to make out any independent right over the suit premises. The Executing Court accordingly made the Obstructionist Notice No.983 of 2009 absolute by its order dated 13.09.2012 and resultantly directed the obstructionist to remove herself from the suit premises.

6. The obstructionist i.e. Smt. Taravati Chaurasiya the Respondent herein carried the matter in Appeal being Appeal No.177 of 2012. In the said Appeal, the obstructionist Smt. Taravati Chaurasiya filed instant application Exh.17 to bring the heirs of the Respondent No.2(a) Smt. Tulsibai Chaurasiya on record. The said application was opposed to on behalf of the original Plaintiffs i.e. the Petitioners herein and from the context of the present Petition, the following excerpt from the said reply is material and therefore reproduced hereinunder :-

“I say that this Honourable Court never made such an observation nor can this Honourable Court make such observation as the decree is already passed against late Tulsibai Chaurasiya during her lifetime and as such the question of bringing her heirs on record now does not arise when the decree is fully executed against the said Tulsibai Chaurasiya. The only question that remained to be decided in the above Obstructionist Notice No.983 of 2009 was whether the obstructionists have any independent right in the suit premises and the Trial Court rightly observed that the obstructionist has no independent right in the suit premises and directed the obstructionist to vacate and hand over vacant possession to the Plaintiffs.”

Hence, the original Plaintiffs have questioned the filing of the application

for bringing the heirs of the said Smt. Tulsibai Chaurasiya on record on the ground that the decree is fully executed against the said Smt. Tulsibai Chaurasiya and that the only question was whether the obstructionist Smt. Taravati Chaurasiya has got any independent right in respect of the suit premises.

7. The Appellate Bench of the Small Causes Court has by the impugned order dated 20.08.2015 has allowed the said application by merely recording that no prejudice would be caused to the other side if the application is allowed as the same would avoid multiplicity of proceedings. As indicated above, it is the said order dated 20.08.2015 passed by the Appellate Bench of the Small Causes Court which is taken exception to by way of the above Petition.

8. The Learned Counsel Mr. K. S. Patil appearing for the Petitioners/original Plaintiffs would contend that since the obstruction was by the Respondent herein, there was no need to bring the heirs of the said Smt. Tulsibai Chaurasiya on record as the said Smt. Tulsibai Chaurasiya and Shri. Sarojkumar Chaurasiya have accepted the decree and also handed over possession of the suit premises in question. It was the submission of Mr. K. S. Patil that the Appellate Bench of the Small Causes Court has without appreciating the aforesaid fact has allowed the said

application Exh.17.

9. Per contra, the Learned Counsel appearing on behalf of the Respondent would seek to support the impugned order and would contend that it is necessary to bring the heirs of said Smt. Tulsibai Chaurasiya on record.

10. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue that arises whether the heirs of the said Smt. Tulsibai Chaurasiya are required to be brought on record. A reading of the order passed by the Appellate Bench of the Small Causes Court discloses that the Appellate Bench of the Small Causes Court has not decided the application on the touchstone of the aforesaid issue. The Appellate Court it seems has in a manner mechanically allowed the application Exh.17 by holding that no prejudice would be caused to the other side namely the Plaintiffs, if the heirs of the said Smt. Tulsibai Chaurasiya are allowed to be brought on record. The Appellate Court has glossed over the fact that the said Smt. Tulsibai Chaurasiya and Shri. Sarojkumar Chaurasiya did not challenge the decree and in fact have handed over possession of the premises in question. It is only the Respondent herein Smt. Taravati Chaurasiya who has raised an obstruction to the said decree. It was her case that she has an independent

right which she claims on the basis that her husband had purchased the suit premises. The Trial Court as indicated above has negated the said contentions of the Respondent. It was therefore necessary or incumbent for the Lower Appellate Court to consider the aforesaid aspects and then arrive at a conclusion as to whether it is necessary to bring the heirs of the said Smt. Tulsibai Chaurasiya on record. If the course of action propounded by the Appellate Bench of the Small Causes Court is to be followed, then it would amount to unnecessarily delaying the execution of the decree, which is the attempt of most of the judgment debtors and obstructionists, this obviously cannot be permitted to be done. It is also pertinent to note that no such application to bring the heirs of the said Smt. Tulsibai Chaurasiya was filed whilst the Executing Court was trying the Obstructionist Notice and the application was filed at the fag end of the hearing of the Appeal. In my view, therefore, the impugned order dated 20.08.2015 is required to be quashed and set aside and accordingly quashed and set aside. The matter is relegated back to the Lower Appellate Court for a de-novo consideration of the said application Exh.17. The same to be done in terms of the observations made hereinabove. The parties to appear before the Lower Appellate Court on 08.02.2016. The Lower Appellate Court thereafter to decide the matter within four weeks of 08.02.2016. Needless to state that the contentions of the parties are

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kept open for being urged before the Lower Appellate Court. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute. Parties to bear their respective costs. Parties to act on a copy of this order duly authenticated by the Court Shirestedar.

[R.M. SAVANT, J]