

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

WRIT PETITION NO. 13120 OF 2016

Mr. Bhaskar Narayan Devsthali ..Petitioner.

Vs

Mr. Dilip Moreshwar Bhat and .. Respondents
Ors

Mr. Jayprakash S. Kapre, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 29/11/2016

PC:

1. Heard Mr. Jayprakash Kapre, learned counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 7.10.2016 passed by the learned Civil Judge, Senior Division, Satara below Exhibits-68, 77 and 85 in Regular Darkhast No.73 of 1995. By that order, the learned trial Judge allowed the application Exhibit-68 made by respondent, hereinafter referred to as 'decree holder', for depositing the amount of Rs. 7680/- in the trial Court and for appointing Court Commissioner for execution of the sale deed and for handing over possession. The learned trial Judge rejected application-Exhibit-77 filed by the petitioner, hereinafter referred to 'judgment debtor', raising objections under section 47 read with Order 21, Rule 28 of C.P.C

for dismissing the Darkhast itself on the ground that as the measurement cannot be carried out, the decree is rendered inexecutable. Judgment debtor also filed additional objections by filing application Exhibit 85 on the ground that the property in question was never demarcated as held by this Court while dismissing the second appeal. Apart from the suit property, the judgment debtor owns open space and it is therefore necessary to demarcate the property before handing over possession. By the impugned order, the learned trial Judge rejected the applications-Exhibits 77 and 85 filed by the judgment debtor.

3. In support of this petition, Mr. Kapre has taken me through (i) decree passed by the trial Court and (ii) order dated 12.12.1989 passed by this Court in Second Appeal. He submitted that while decreeing the suit, the learned trial Judge directed the decree holder to deposit full price of plot no.5 out of CTS no.257, situate at Mangalwar Peth, Satara, at the rate of Rs.4.25 paise per sq.ft. and the judgment debtors to execute the sale deed in respect of that property. The learned trial judge also directed the decree holder to deposit the amount in the court after judgment debtor carried out measurement of plot no.5 and to fix boundary so as to ascertain the exact area and to calculate the price at the agreed rate per square feet within two months. It was also made clear that if the judgment debtors failed to carry out measurement within the specific period, the decree holder would

at liberty to get it measured at the cost of judgment debtors and thereafter get the sale deed executed through Court Commissioner on depositing the amount of consideration within one month from completing measurement.

4. Mr. Kapre submitted that while dismissing the second appeal preferred by judgment debtors, this court noted that the property was never demarcated as observed by the courts below. It was further observed that even then the judgment debtors should have, at the most, got the property demarcated on or before 28.2.1979 and the suit was instituted on 7.6.1982 i.e. within the period of limitation. Mr. Kapre submitted that apart from the suit property, open plot adjacent to the suit property is owned by the judgment debtor. Unless and until the property is demarcated as observed by this Court in order dated 12.12.1989 in the Second Appeal, decree cannot be executed. He has taken me through (i) communication dated 5.6.2012 addressed by City Survey Officer, Satara to the Superintendent of C.J.S.D, Satara, (2) communication dated 6.8.2012 addressed by Superintendent of that Court to City Survey Officer and (3) communication of City Survey Officer at page 55. He submitted that perusal of these documents at pages 53, 54 and 55 would indicate that judgment debtor never objected to measurement. He also relied upon report of the City Survey Officer dated 5.8.2010 which records that on two occasions notice was given to the decree

holder for carrying out measurement earlier and as city survey number was wrongly mentioned, measurement could not be carried out. He further submitted that the findings recorded by the learned trial Judge in paragraph 13 onwards holding that it is the judgment debtor who is causing obstruction and objecting to the measurement, is contrary to record and factually incorrect. The said findings are not supported by any material on record. He, therefore submitted that petition requires consideration.

5. I have considered the submissions advanced by Mr. Kapre. I have also perused the material on record. As noted earlier, the decree holder has instituted suit for specific performance of contract in respect of plot no 5 out of CTS no. 257 admeasuring 43x43. By order dated 17.8.1985, the learned trial Judge decreed the suit. Operative part of the order reads thus:

“ It is hereby ordered that the plaintiff on depositing full price of the suit land as per calculation at the rate of Rs.4.25 per sq.ft, the defendants to execute a sale deed in respect of plot no.5 out of C.T.S. No.257.

Before the plaintiff deposit the amount in court, the defendants to carry out the measurement of plot no.5 and to fix the boundary so as to ascertain the exact area and to calculate the price at the agreed rate per square feet within two months.

If defendants failed to carry out the measurement within the specified period, the plaintiff is at liberty to get it measured at the cost of the defendants, and thereafter get the sale deed executed through court Commissioner, on depositing the amount of consideration within one month from completing the measurement.”

It is not in dispute that aggrieved by this decision the judgment

debtors preferred First Appeal which was dismissed on 16.9.1988. Aggrieved by these decisions, the judgment debtors preferred Second Appeal in this court which was dismissed on 12.12.1989.

6. Decree holder instituted proceedings for execution of the decree. During pendency of that proceedings, the judgment debtors raised objections on the ground that Darkhast cannot proceed and the same may be dismissed. Though the objections were raised by the judgment debtors, the same were dismissed. Aggrieved by that decision, the judgment debtors preferred Revision Application in this court which was also dismissed. Thereafter, the proceedings of Darkhast commenced. Decree holder filed application Exh.44 for carrying out measurement. That application was allowed. When the measurement work was to be carried out, it transpired that plot number C.T.S.257/5 changed to 257/9. Decree holder therefore filed application Exh.50 for carrying out measurement of plot no.257/9. When that application was allowed and measurement work was to be carried out, judgment debtors raised objections for measurement. On three occasions, the work of measurement was to be carried out. However, on all these occasions, judgment debtors objected and therefore measurement could not be carried out.

7. Decree holder therefore filed application Exh.68 for carrying out measurement on the ground that Darkast is pending

for more then 17 years and still the measurement is not carried out only because of the objections raised by the judgment debtors.

8. Judgment debtors filed applications Exhibits-77 and 85 raising objections on the ground that the decree is inexecutable and that as the demarcation is not made as per the order of this court, decree cannot be executed. The learned trial Judge has considered the objections raised by the judgment debtors from paragraph 13 onwards. The learned trial Judge in paragraph 18 observed that the application Exh.77 and 85 are nothing but an attempt to make a decree inexecutable and to compel the decree holder to give up his interest accrued by the decree.

9. In my opinion, the objections raised by the judgment debtors are false and frivolous and these objections are nothing but an abuse of process of court and an abuse of process of law. Darkhast proceedings are pending for more than 17 years. This is to be appreciated in the background that the decree holder is ready and willing to deposit amount in excess of the area of the property in dispute. No material is produced on record by the judgment debtors to indicate that measurement was carried out by them in pursuance of the trial Court's order. In fact, operative order extracted herein above clearly obligates the judgment debtors to carry out measurement and to fix the boundary so as to ascertain the exact area. The judgment debtors have not

produced any material to indicate that they have carried out measurement of plot no.5 and fixed boundary as per the trial 'Court order.

10. In the case of Ramrameshwari Devi Vs. Nirmala Devi, (2011) 8 Supreme Court Cases 249, the Apex Court has observed that time has come for imposing realistic costs for delaying litigation as also for raising frivolous pleas. In paragraphs 52 and 54, it was observed thus:

“52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.

B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing substantial justice.

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic

approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

E. The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the Defendants or Respondents and only after hearing concerned parties appropriate orders should be passed.

F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished. No one should be allowed to abuse the process of the court.

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

H. Every case emanates from a human or a commercial problem and the Court must make serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.

J. At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other

miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.”

11. In paragraph 55, the Apex Court observed that the other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various Courts. The Appellants have also wasted judicial time of the various Courts for the last 40 years.

12. In the case of Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria, AIR 2012 S.C. 1727, the Apex Court referred to the decision of Ramremeshwari Devi (supra). In paragraphs 84 and 85, it was observed thus: -

“False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

85. This Court in a recent judgment in Ramrameshwari Devi and Ors (AIR 2011 SC (Civ) 1776: 2011 SCW 4000) (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no

incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

13. In the case of Messer Holding Ltd Vs. Shyam Madanmohan Ruia, AIR 2016 Supreme Court 1948, in paragraph 44, the Apex Court referred to the decision of Ramrameshwari Devi (supra) and observed thus:

"44. This case should also serve as proof of the abuse of the discretionary jurisdiction of this Court under Article 136 by the rich and powerful in the name of a 'fight for justice' at each and every interlocutory step of a suit. Enormous amount of judicial time of this Court and two High Courts was spent on this litigation. Most of it is avoidable and could have been well spent on more deserving cases."

14. In my opinion, the present proceedings are nothing but abuse of process of court as also abuse of process of law. In view of the decisions of the Apex Court in Ramrameshwari Devi (supra), Maria Margarida Sequeria Fernandes (supra) and Messer Holding Ltd (supra), this is a fit case for imposing exemplary costs against the petitioner. Writ Petition fails and the same is dismissed with costs quantified at Rs.25,000/-. Costs shall be

paid by the petitioner within 2 weeks from today, failing which the learned trial Judge will pass appropriate order. Order accordingly.

(R.G.KETKAR, J.)