

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12236 OF 2015

Ratnkar Rambhau Supekar and another ... Petitioners
Vs.
Narayan Raoba Khatate and others ... Respondents

Mr. Prashant P. More for Petitioners.
Mr. V. S. Talkute for Respondents.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 10, 2016

P.C. :

Heard Mr. More, learned Counsel for petitioners and Mr. Talkute, learned Counsel for respondents No.1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 20.11.2015 passed by the learned 2nd Joint Civil Judge, Junior Division, Pune below exhibits-62 and 67 in Regular Darkhast No.146 of 2001. By that order, the learned trial Judge kept the hearing of applications exhibits - 62 and 67 in abeyance till the findings are recorded against issues No.1 and 2 mentioned in that order.

3. Application exhibit-62 was taken out by the petitioners, hereinafter referred to as decree-holders for disposing of the Darkhast on the ground of satisfaction of the decree. Application exhibit-67 was filed by the judgment-debtors for cancellation of possession of the property given to decree-holders while executing the decree.

4. Mr. More submitted that decree-holders had instituted Regular Civil Suit No.2046 of 1995 for possession of 17 Ares from the

defendants and for perpetual injunction. In paragraph 1(c) of the plaint, property described is as follows:

Gat No. 294/2 (old) corresponding to Gat No.194/1 (new)
admeasuring 86 Ares bounded as under:

Eastern side : Gat No.294/1;

Northern side : Gat No.295;

Western side : Gat No.293;

Southern side : Land of Jaywant Chaudhary.

5. The Suit was amended and in paragraph 7-A of the plaint, it was asserted that District Land Surveyor carried out measurement of Gat No.294/2 (old), which is Gat No.195/2 (new) and the encroached area of 17 Ares is shown in red colour in the map. Mr. More submitted that the Suit was decreed on 30.08.2000 and the defendants were directed to deliver vacant possession of the encroached portion of 17Ares made by them on the land Gat No.294/2 (old) to the plaintiffs which is shown in red colour by the Land Surveyor in the measurement map as per exhibit-81, which was treated as part and parcel of the decree. He submitted that in pursuance of this decree, on 17.03.2015, the learned trial Judge allowed the application and issued warrant of possession under Order XXI, Rule 35 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'). The decree-holders have obtained possession of Gat No.194/1 (new). Decree-holders, therefore, filed application exhibit-62 for disposing of Darkhast on the ground that decree is satisfied. Judgment-debtors however filed application exhibit-67 raising objection to the execution of decree.

6. Mr. More invited my attention to paragraph 8 of the objections raised by the judgment-debtors at exhibit-67. In paragraph 8, it is contended that Gat No.194/1 was not the subject matter of the Suit as also of the decree. Gat No.194/1 is not in existence. The decree-holders connived with person who carried out measurement as also with Bailiff

and obtained possession of the land. He submitted that by the impugned order, the learned trial Judge has framed two issues and directed parties to lead evidence. He submitted that the impugned order is liable to be set aside thereby allowing application exhibit-62 made by the decree-holders and disposing of Darkhast proceedings by recording satisfaction of the decree.

7. On the other hand Mr. Talkute has invited my attention to -
 - a. Warrant of possession issued under Order XXI, Rule 35 of C.P.C. wherein the property described is as follows:

Gat No. 294/2 (old) corresponding to Gat No.194/1 (new) admeasuring 17 Ares bounded as under:

Eastern side : Gat No.294/1;
 Northern side : Gat No.295;
 Western side : Gat No.293;
 Southern side : Land of Jaywant Chaudhary.

- b. Panchnama dated 28.04.2015 at exhibit-42 collectively;
- c. Bailiff's report dated 28.04.2015;
- d. Possession warrant which was re-issued on 29.06.2015;
- e. Panchnama dated 26.06.2015;
- f. Bailiff's report dated 26.06.2015 wherein Gat No.294/2 (old) is shown as Gat No.194/1 (new).

8. Mr. Talkute submitted that the learned trial Judge has directed the parties to lead evidence for the purpose of finding out whether delivery of possession as per exhibit-61 was made in accordance with the decree passed in the Suit and whether Gat No.294/2 (old) is converted into Gat No.194/1 (new) or 195/2. He submitted that this order being purely an interlocutory order, no case is made out for invocation of powers under Article 227 of the Constitution of India.

9. I have considered the rival submissions advanced by the learned

Counsel appearing for the parties. I have also perused the material on record. I have already given the details as to description given by the decree-holders in paragraph 1(c) and in paragraph 7-A of the plaint. Perusal of the warrant of possession earlier issued as also the warrant of possession issued subsequently shows that Gat No.294/2 (old) is described as 194/1 (new). Mr. More conceded that Gat No.194/1 is not in existence. However, the record prima facie discloses that decree-holders were given possession of Gat No.194/1. It is, in that context, necessary to hold inquiry in respect of the issues framed by the learned trial Judge. I, therefore, do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. The learned trial Judge will decide the said issues after considering the evidence led by the parties. If the trial Court finds that while executing the decree passed in Regular Civil Suit No.2046 of 1995, decree-holders have taken possession of the property from the respondents, other than the property, which was the subject matter of the Suit, while passing the order, will take appropriate action against the decree-holders also the person who carried out measurement and the concerned Bailiff. Subject to this, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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