

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7328 OF 2016

Dattu Bhairu Kanse And Anr	...Petitioners
<i>Versus</i>	
Vitthal Dadu Kanse And Ors	...Respondents

....
Mr.Dhananjay Rananaware, Advocate for the Petitioners.

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CORAM : R. G. KETKAR, J.

DATE : 24th JANUARY, 2017

P.C.

1. Heard Mr.Dhananjay Rananaware, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'judgment debtors', have challenged the judgment and order dated 27.1.2006 passed by the learned Jt. Civil Judge, Junior Division, Satara below Exhibits-22 and 24 in Regular Darkhast No.219/2004. By that order, the learned trial Judge allowed the application Exhibit-22 made by the decree holder and directed the Court Commissioner to execute the decree within the ambit and scope of original decree by letter and spirit of it. The

learned trial Judge also disposed of the application Exhibit-24 made by the petitioners, hereinafter referred to as 'judgment debtors', and for appointing Court Commissioner for fixing the location of the suit property and thereafter execute the decree.

3. Mr. Rananaware submitted that the delay is not caused by the judgment debtors. The learned trial Judge had allowed the application for appointment of the Court Commissioner on 19.7.2005. Judgment debtors instituted Writ Petition in this Court which was dismissed on 8.8.2005. Decree holder thereafter filed application for police aid at the time of execution of the possession warrant. That application was allowed on 27.1.2006. However, the decree holder did not deposit the necessary charges towards the police aid. He submitted that the judgment debtor is not responsible for causing delay and the delay is not attributable to him. The only submission of the judgment debtor is that the location and boundaries of plot No.88 may be fixed and, thereafter the Court Commissioner may be directed to execute the decree. He has invited my attention to the decree passed in R.C.S. No.61/1989 and in particular paragraph-1 thereof. Paragraph-1 deals with plot No.88 admeasuring 76 square meters in Survey No.130. It is

the case of the decree holder that patra shed admeasuring 3 khan is situate in plot No.88. He submitted that pending suit, the decree holder amended the palint on 29.6.1996 and incorporated paragraphs-1B and 4B. In paragraph-1B decree holder allged that on the southern side of the property described in paragraph-1, judgment debtor has constructed temporary patra shed admeasuring 25 ft. X 25 ft. In paragraph-4B, the decree holder alleged that during pendency of the suit, judgment debtors No.2 and 3 unauthorizedly and high handedly constructed temporary patra shed admeasuring 25 ft. X 25 ft. in May, 1994. Though the decree holder objected to this construction, they completed unauthorized construction and, therefore, mandatory injunction was sought by the decree holder against the judgment debtors for removal of this shed.

4. Mr. Rananaware submitted that perusal of the description given in paragraph-1 shows that on the southern side of plot No.88, properties of judgment debtors is situate. In the process of executing the decree, the decree holder will demolish the structures standing in the property of judgment debtors. It is, therefore, absolutely necessary to fix the boundaries as also location of plot No.88 and thereafter the

Commissioner may be directed to execute the decree.

5. I have considered the submissions advanced by Mr.Rananaware. I have also perused the material on record. Judgment debtors had instituted Writ Petition (St.) No.10604/2016 challenging the judgment and order dated 15.2.2016 passed by the learned trial Judge in Misc. Application No.54/2014. By that order, the learned trial Judge allowed the application made by the decree holders for restoration of Execution Petition No.219/2004 subject to payment of costs of Rs.1000/-. While disposing of the Petition, the contentions raised by the judgment debtors about the failure of the decree holder in depositing the amount of police aid was also dealt with. In paragraph-5, it was observed that the decree holder is a farm labourer and the very fact that he was not in a position to deposit the amount of police aid for executing itself shows that his financial condition is not sound. Otherwise, there was no reason for not depositing the amount for executing the decree, which was admittedly in favour of the decree holder.

6. As far as application Exhibit-24 is concerned, as noted earlier, by order dated 19.7.2005 below Exhibit-1, the learned

trial Judge appointed the Court Commissioner. Judgment debtors instituted Writ Petition in this Court on 8.8.2005. That Petition was dismissed. While dismissing the Petition, this Court observed that there is no reason to apprehend that the Court Commissioner will not faithfully execute the decree as passed by the trial Court. Though the order was passed on 8.8.2005 immediately on 16.8.2005 the judgment debtors filed present application Exhibit-24 once again praying for locating the suit property in plot No.88 as also fixing the boundaries. In my opinion, this is nothing but an attempt on the part of the judgment debtors to delay the execution of the decree. The apprehension expressed by the judgment debtors was also taken care of by this Court while dismissing Writ Petition on 8.8.2005. Not only that while disposing of application Exhibit-22, the learned trial Judge also directed the Court Commissioner to execute the decree within the ambit and scope of original decree by letter and spirit of it.

7. Paragraph-1B of the plaint shows that the decree holder has given description of temporary patra shed admeasuring 25 ft. X 25 ft.. Perusal of description in paragraphs-1 and 1B shows that the temporary shed

admeasuring 25 ft. X 25 ft. described in paragraph-1 of the
plaint is also situate in plot No.88 as described in paragraph-1
of the plaint.

8. In view thereof, I do not find any merit in the
submissions of Mr.Rananaware that while executing the decree,
the Court Commission will go beyond the decree and demolish
the property belonging to judgment debtors. In my opinion, the
application made at Exhibit-24 by the judgment debtors is
nothing but an attempt to prolong the execution of the decree
and hence same is required to be dismissed by exemplary costs
of Rs.10,000/-. Costs of Rs.10,000/- (Rupees Ten Thousand
Only) shall be deposited in the trial Court within four weeks
from today. Decree holder is permitted to withdraw that amount
unconditionally. Failure to deposit the amount within the
stipulated period, the Collector, Satara will recover that amount
as land revenue from the judgment debtors. Order accordingly.
Authenticated copy of this order be sent to the Collector, Satara
for information and necessary action.

(R. G. KETKAR, J.)