

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 8293 OF 2016

C.D.R. Daniel Phillips & Ors. ... Petitioners
Vs.
Mrs. Malti Chandrapraa & Ors. ... Respondents

Mr. Rahul D. Motkari, Advocate for the petitioners.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **26th April, 2017.**

P.C.:

This Petition is directed against the order dated 4th July, 2014 passed by the learned Civil Judge, Junior Division, Vadgaon, Maval in Regular Darkhast No. 3 of 2010 thereby dismissing the Execution Petition, against which the petitioners, who are the original plaintiffs and decree holders have moved this Writ Petition.

2. It is the case of the petitioners that the petitioners have filed Regular Civil Suit No. 171 of 2003 against defendants nos. 1 to 5 for simplicitor injunction. The suit was decreed by order dated 3rd September, 2004 and the learned Judge directed the defendants or their agents, servants not to disturb the peaceful possession of the plaintiffs and also not to take forcible possession of the suit property

occupied by the plaintiffs and not to disturb the electricity supply and water supply provided to the suit premises. Thereafter, in the year 2010 the petitioners/original plaintiffs filed Darkhast proceedings against the respondents/defendants to implement the order passed by the Court. In the Darkhast proceedings, respondent no. 6 was added, as respondent nos. 1 to 5 have sold their property to respondent no. 6. Respondent no. 6 had demolished the old building and in that place, constructed a big building. It is the case of petitioners/deed holders that because of the construction of the new building, their right of ingress and egress was violated and at the time of construction, respondent no. 6 damaged their septic tank.

3. The learned counsel for the petitioners submitted that the respondents/defendants have destroyed the septic tank and damaged the sewage system. He submitted that there was injunction running against the Judgment Debtor/original defendants and therefore, these acts done by the defendants are in violation of the order passed by the Court. He further relied on the letter given by the Lonavala Municipality to respondent no. 6 wherein the Lonavala Municipality warned him to remove the unauthorized structure of a wall and other structure.

4. Perused the plaint, judgement and also the order dated 4th July, 2014 passed by Civil Judge Junior Division, Vadgaon dismissing the Execution Petition. This Writ Petition mainly is filed against respondent no. 6 who was not party to the suit and therefore, injunction granted cannot run against him. The suit was decreed in September, 2004 and thereafter within 2 to 3 months, the property was purchased by respondent no. 6 from the original defendant nos. 1 to 5. Respondent no. 6 thereafter demolished the old building and constructed a new building. The observation made by the learned Executing Judge that this was the main ground of grievance of the petitioner, appears sound. Admittedly, there is no obstruction to the ingress and egress of the petitioners, who are still using and occupying the suit premises. There is nothing to show that there is any other damage to septic tank. Moreover, a letter written by the Lonavala Municipality to respondent no. 6 is of the year 2010. Under such circumstances, nothing can be faulted with the order passed by the Executing Court. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)