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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6566/2014

Baburao Rama Rakade,
age 68 yrs., occu.Agriculturist,
Through his G.P.A. Holder
Shivaji Baburao Rakade,
age 43 yrs., occu.Agriculturist,
r/o Bharadi Tq.Sillod.
Dist.Aurangabad.

...Petitioner..
(Org.Decree Holder)

Versus

- 1] Tukaram Ganu Rakade,
age 45 yrs., occu.Agriculturist,
- 2] Pandit Shripat Rakade,
age 63 yrs., occu.Agriculturist,
- 3] Pundlik Shripat Rakade,
age 65 yrs., occu.Agriculturist,
- 4] Khandu Sampat Rakade (dead).
- 5] Shriram Ganu Rakade,
age 40 yrs., occu.Agriculturist,
- 6] Bapurao Ganu Rakade,
age 42 yrs., occu.Agriculturist,

All r/o Bharadi Tq.Sillod
Dist.Aurangabad.

...Respondents..
(Org.Judgment Debtors)

.....

Shri Surendra V. Suryawanshi, Advocate for petitioner.
Respondent nos.1, 5 & 6 served.
Shri P.F. Patni, Advocate for respondent nos.2 & 3.
Respondent no.4 dead.

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CORAM: R.M. BORDE, J.

DATE: 28.03.2018

ORAL JUDGMENT:

1] Heard learned counsel appearing for the parties.

2] Rule. With the consent of learned counsel appearing for the parties, the petition is taken up for final disposal at the admission stage.

3] The petitioner is a decree holder, whereas the respondents are the judgment debtors. The suit presented by the petitioner – original plaintiff claiming a decree of perpetual injunction in respect of land Block No.336 admeasuring 2 Acres 13 Gunthas situated at village Bharadi Tq.Sillod Dist.Aurangabad, was initially dismissed by the trial Court. In an appeal presented by the petitioner, being Regular Civil Appeal No.386/2000, the first appellate Court, while allowing the appeal, passed a decree of perpetual injunction thereby restraining the respondents herein – judgment debtors from interfering in peaceful possession of the petitioner – plaintiff over the suit land Block No.336 of village Bharadi Tq.Sillod.

4] The petitioner presented a Regular Darkhast

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bearing No.7/2011 alleging dispossession of the petitioner – plaintiff at the hands of the respondents – defendants during the month of March, 2009, without any reason. The petitioner – decree holder in his application at Exhibit 6 requested the executing Court to issue possession warrant in respect of the suit property and also issue warrant of arrest of judgment debtors on account of willful disobedience and breach of the decree passed by the learned Additional District Judge in Regular Civil Appeal No.386/2000. The application tendered by the petitioner – decree holder has been opposed on several grounds by the respondents – defendants – judgment debtors. One of the contentions raised by the judgment debtors is that since the decree passed by the first appellate Court is in the nature of prohibitory decree, the decree holder, in an execution proceeding, cannot claim restoration of possession of the property. It has also been contended that the petitioner – decree holder has not proved his dispossession at the hands of the judgment debtors.

5] The executing Court, considering the contentions raised by the judgment debtors proceeded to reject the

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application. The executing Court has principally rejected the application for the reason that the decree passed by the first appellate Court is a prohibitory decree and there is no direction in respect of restoration of possession by the first appellate Court.

6] The view taken by the executing Court, while rejecting the application, is erroneous and contrary to the ratio laid down by this Court in the matter of *Rajeshree Ramesh Bhoosreddy v. Gyandevi Gangaprasad Mishra & others* reported in **2007 (5) Bom.C.R.,813**. The learned Single Judge of this Court has also considered the impact of Amendment Act of 2002, effective from 1.7.2002, whereby an explanation has been introduced to Rule 32 of Order 21 of the Code of Civil Procedure to the effect "For the removal of doubts, it is hereby declared that expression the act required to be done covers prohibitory as well as mandatory injunctions." It is observed by the learned Single Judge that the entire controversy regarding the executability of prohibitory decrees in circumstances when act prohibited has been accomplished by judgment debtor appears to have been set at rest by the explanation. The learned Single Judge has

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referred to two more judgments reported in **2001(1) Bom.C.R., 670** and **1999(4) ALL M.R., 683**. The learned Single Judge has observed in paragraph no.6 as under :-

"Law permits a person to protect his rights in all possible ways and filing suit to obtain prohibitory or preventive relief / injunction is one such mode. But it was noticed that there was no equally effective procedure for its execution. Hence, judgment debtor, who took possession by violating such prohibitory or restraining decree, could not be evicted and decree holder was required to file fresh suit to remove / oust him. The very purpose of filing a suit for prohibitory or restraining or preventive relief was thus getting defeated and it was leading to multiplicity of litigation. There were conflicting views expressed in various decisions of different High Courts. However, after amendment mentioned above, said lacuna has been taken care of and executing Court is, therefore, now competent to undo acts or things, commission of which has been prevented by prohibitory decree. The amendment has removed the impression of helplessness of Executing Court in such matters and also avoided unnecessary litigation. The remedy of filing suit to obtain preventive or restraining relief has become more meaningful."

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7] I am in respectful agreement with the aforesaid view expressed by the learned Single Judge. Considering the reasons recorded above, in my view, the order passed by the executing Court impugned in this petition is not sustainable and deserves to be set aside and the same is accordingly set aside.

8] The matter is remitted back to the executing Court for reconsideration. The executing Court shall conduct a proper enquiry into the application tendered by the petitioner and may pass appropriate orders in accordance with the provisions of law. The executing Court shall dispose of the application as expeditiously as possible and preferably within a period of four months from today and it is accordingly directed.

9] Rule is made absolute to the extent as specified above with no order as to costs.

(R.M. BORDE, J.)