

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12178 OF 2018

Smt. Rasikmani wd/o Lallubhai Umaji Shah (deleted since .. Petitioners
deceased) and Ors.

Versus

Shri. Chhaganlal Kanji Shah (deleted since deceased) and Ors. .. Respondents

Mr. J.M. D'Silva, for the Petitioners.

Mr. R.M. Haridas and Mr. Neel Gala for Respondent Nos. 4A, 4C and 4D.

CORAM : M.S. SONAK, J.

DATE : 19 NOVEMBER 2018.

ORAL JUDGMENT :-

1. Heard Mr. J.M. D'Silva for the Petitioner and Mr. R.M. Haridas for the Respondents.

2. The challenge in this Petition is to the orders dated 07.03.2018 and 05.10.2018 made by the trial Court and the revisional Court respectively, issuing warrant of possession in terms of Order XXI Rule 35 of the CPC for the purpose of execution of eviction decree in RAD Suit No. 2614 of 1980.

3. Mr. D'Silva, learned Counsel for the Judgment debtor submits that the decree issued is in-executable for want of identification of the suit premises. He points out that the decree refers to the plan in Exhibit-A annexed to the Plaint. The prayer clause makes reference to an attached W.C. However, from the plan it is very evident that to the suit premises, there was no W.C. attached. W.C., if any, was attached to

the neighboring premises over which the decree holder had no decree for eviction.

4. Mr. D'Silva, then refers to the bailiffs report dated 23.03.2018 and points out that from the report it is quite evident that the suit premises as described in the plaint were no longer in existence, since, the same, were gutted in a fire. He points out that there was no amendment to the plaint and therefore, the decree is quite in-executable for the purpose of proper identification of the suit premises. He points out that the impugned orders have been issued without consideration of this crucial aspect and therefore, they warrant interference. He submits that in the absence of proper identification of suit premises, no decree for possession can ever be executed. He relies upon the decision of the learned Single Judge of this Court in ***Rajendra Dinkar Yadav and Anr. Vs. Smt. Bharirathibai Shripati Jadhav and Ors. 1990 (3) Bom.C.R. 415.*** On all these grounds, he submits that the impugned orders are required to be set aside.

5. Learned Counsel for the decree holder submits that there is no serious dispute with regard to the identification of the suit premises. He points out that the plaint was duly amended and the decree is in terms of the amended plaint. He points out that the issue of identification was raised even earlier by the judgment debtor but the same was not accepted by this Court in its judgment and order dated 19.01.2012 whilst dismissing of Civil Revision Application No. 49 of 2011. He points out that the decree for eviction has attained finality and execution proceedings ought not to be delayed on such vague pleas.

6. Rival contentions now fall for determination.

7. The decree for restoring the possession of the suit premises was made by the small causes Court on 16.03.1999. The same was confirmed in appeal on 30.09.2010. Against the decree and its confirmation, the judgment debtor instituted C.R.A. No. 49 of 2011 before this Court.

8. Amongst various other grounds to challenge the decree, the judgment debtor specifically raised a contention that there was no proper identification of the suit premises and therefore, the decree itself warrants interference. This contention was rejected by this Court in its judgment and order dated 19.01.2012 in specific terms. The relevant observations at paragraph 19 read as follows :-

“19. As far as the description of the suit property is concerned the decree for possession has been passed in respect of the area of 300 sq.ft. with W.C. as shown on the sketch annexed to the plaint. The sketch is referred to in paragraph 3 of the plaint which specifically states that the area of 300 sq.ft. With W.C. has been shown on the sketch annexed to the plaint and marked as Exhibit-A. Therefore, it cannot be said that there is no sufficient material on record to identify the are of 300 sq.ft.”

9. Undaunted by such rejection, the judgment debtor has once again raised the very same objection, this time to the execution of the

decree which has attained finality. This is clearly impermissible and such objections have rightly been rejected by the trial Court as well as the revisional Court.

10. There is sufficient material on record as regards the identification of the suit premises. The plaint was duly amended and the decree has to be construed in the context of the amended plaint. In the amended plaint, the decree holder had in fact applied for restoration of premises ad-measuring 580 sq.ft. However, learned trial Judge, made a decree in respect of premises admeasuring only 300 sq.ft. which was the original description in the plaint. It is possible that the original nature of the property may have undergone some slight changes on account of the passage of time or gutting by fire. However, that is by no means sufficient to frustrate the execution of the decree which has been obtained by decree holder way back in the year 1999. The suit, in the present case, was instituted in the year 1980.

11. In case of ***Satyawati Vs. Rajinder Singh and Anr. (2013) 9 SCC 491***, the Apex Court has made strong observations in relation to the execution of decrees so that, the decree holders are able to enjoy the fruits of the decrees obtained by them. The relevant observations read as follows :-

“12. It is really agonising to learn that the appellant-decree-holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant-plaintiff had finally succeeded in January 1996. As stated hereinabove, the Privy Council in General Manager of the Raj Durbhunga V. Coomar Ramaput Singh had observed that the difficulties of a litigant in India begin when he has obtained a decree. Even in 1925, while quoting the

aforested judgment of the Privy Council in Kuer Jang Bahadur V. Bank of Upper India Ltd. The Court was constrained to observe that; (AIR p.448)

“Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment-debtors in such a way as to make courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights.”

13. *In spite of the aforestated observation made in 1925, this Court was again constrained to observe in Babu Lal V. Hazari Lal Kishori Lal in para 29 that: (SCC p.539)*

“29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections.”

14. *This Court, again in Marshall Sons & Co. (I) Ltd. V. Sahi Oretrans (P) Ltd. Was constrained to observe in para 4 of the said judgment that : (SCC p. 326)*

“4. .. it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time.”

15. Once again in *Shub Karan Bubna V. Sita Saran Bubna* at para 27 this Court observed as under: (SCC p.699)

“27. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.”

16. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree-holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

17. We are sure that the executing court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiff gets effective justice.”

12. Applying the principles laid down by the Hon'ble Apex Court in case of *Satyawati (Supra)* to the facts of the present case, there is no case made out to interfere with the impugned orders. In this case, the two Courts, have concurrently ruled that there is no infirmity

in the identification of the suit premises and the decree is very much executable. This Court, as noted earlier, had already rejected the contention based upon the identification of the suit premises in the earlier round. Accordingly, there is absolutely no jurisdictional error in the impugned orders.

13. The contention is that the execution which is now ordered is not in respect of premises as described in the plaint or amended plaint is unacceptable. There is proper explanation furnished by the decree holder in respect of the plaint tendered by him in the course of the execution proceedings by him. As noted earlier, there are bound to be some minor variations here and there in the description of the suit premises of almost two to three decades ago and the present status of the suit premises. That by itself cannot be good ground for frustration of execution proceedings and denial to the decree holder, the fruits of the long drawn litigation. This is accordingly not a good ground to interfere with the impugned orders.

14. The decision in case of *Rajendra Dinkar Yadav (Supra)* is distinguishable since it turns on its own facts. In the said case, there was nothing in the decree to identify the premises given to the tenant. The facts in the present case, as noted earlier, are quite different. The two Courts have found no merit in the contention based upon the

identification of the suit premises. Similar contention was already rejected by this Court in the earlier round of litigation. Therefore, the decision in *Rajendra Dinkar Yadav (Supra)* is of no assistance to the judgment debtor.

15. For the aforesaid reasons, this Petition is dismissed. However, there shall be no order as to costs.

16. At this stage, Mr. D'Silva, learned Counsel for the Petitioner prays that the execution is stayed for a period of three weeks. Mr. Haridas, learned Counsel for the Respondents makes a statement that the decree holders will not pray for execution for a period of three weeks from today. The statement is accepted.

(M.S. SONAK, J.)