

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.792 OF 2019

Gangabai Ramrao Patil,
Age-70 years, Occu-Agriculture,
R/o at Handargulli,
Taluka Udgir, Dist. Latur

– PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Minister for State (Revenue),
Government of Maharashtra,
Mantralaya, Mumbai,
2. The Additional Commissioner,
Aurangabad Division, Aurangabad,
3. The Collector,
Latur, District : Latur,
4. The Sub Divisional Officer,
Ahmedpur, Dist. Latur,
5. The Tahsildar,
Udgir, Taluka Udgir,
Dist.Latur,
6. Madhav Anandrao Dhupe,
Age-80 years, Occu-Agriculture,
7. Ramesh Madhavrao Dhupe,
Age-56 years, Occu-Agriculture,
8. Gangadhar Madhavrao Dhupe,
Age-51 years, Occu-Agriculture,

All R/o Handargulli,
Tal.Udgir, Dist.Latur

– RESPONDENTS

Mr.M.S.Kulkarni, Advocate for the petitioner.
Mr.S.R.Yadav, AGP for respondent Nos. 1 to 5.
Mr.D.B.Thoke, Advocate for respondent Nos. 6 to 8.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/06/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. It is quite often said in matters of execution of decrees that it is easier to succeed in getting a decree in accordance with Law from a Court, but is very difficult to have the decree executed. This is one classic case of such type of vexatious litigation.
3. The sequence of events are material and which are as under :-
 - [a] The petitioner had entered into an agreement to sell with the concerned respondents on 09/09/1973.
 - [b] As the respondents did not abide by the agreement to sell and did not execute a sale deed, Spl.C.S.No.28/1975 was filed. The petitioner, who was 30 years of age at the relevant time, was a co-plaintiff.
 - [c] The suit was re-numbered as RCS No.616/2000 upon being

transferred to the Court of the learned Civil Judge, J.D. Udgir.

[d] By judgment dated 30/08/2003, the suit was partly decreed and the petitioner herein was declared as a joint possessor of the suit land to the extent of 2/3rd share in the suit.

[e] RCS No.616/2000, which was filed by the defendants in the first suit, was dismissed.

[e] The litigating sides preferred RCA No.53/2003, 22/2004 and 23/2004 before the First Appellate Court.

[f] By judgment dated 23/03/2006, Appeal No.53/2003, filed by the petitioner herein, was allowed and it was concluded that the entire property would go to the share of the petitioner.

[g] Appeal Nos. 22/20004 and 23/2004 filed by the defendants and the plaintiff in the second suit, were dismissed.

[h] The parties preferred SA No.686/2006 and 687/2007 against the petitioner before this Court. By judgment dated 03/05/2007, the second appeals were dismissed.

[i] The aggrieved parties approached the Hon'ble Apex Court by preferring Special Leave to Appeal Nos. 21264/2007 and 21265/2007. By order dated 23/11/2007, the petitions were dismissed by the Hon'ble Apex Court.

[j] The petitioner initiated execution proceedings and the judgment debtors preferred an application under Order XXI Rule 97

of the CPC raising objections.

[k] As the said objections were rejected, they preferred Writ Petition No.4342/2012, which was considered by the learned Vacation Judge of this Court. By observing that the judgment debtors are attempting to thwart the decree which was confirmed up to the Apex Court, the writ petition was dismissed.

[l] The petitioner therefore moved the First Revenue Authority for seeking a mutation entry in her favour.

[m] By order dated 20/06/2012, the said authority rejected the request on the ground that no Court had observed that the mutation entry should be carried out in favour of the decree holder.

[n] The petitioner approached the Tahsildar who rejected the revision application by order dated 20/03/2013.

[o] The petitioner approached the S.D.O. and by order dated 10/07/2014, the S.D.O. allowed the Appeal u/s 247 of the M.L.R. Code.

[p] On 10/10/2014, the mutation entry was carried out in favour of the petitioner.

[q] The judgment debtors approached the Additional Collector, who rejected their request by order dated 28/10/2015.

[r] The judgment debtors then approached the Additional Commissioner, who rejected their revision by order dated

27/01/2017.

[s] By the impugned order dated 21/08/2018, the Minister for State (Revenue) allowed the revision of the judgment debtors. He quashed and set aside the orders of the Additional Commissioner dated 27/01/2017 and of other authorities, who held in favour of the decree holder and directed the S.D.O. to once again carry out an enquiry and pass a fresh order.

4. Learned Advocate for the judgment debtors has strenuously defended the impugned order of the State Revenue Minister contending that the said order is based on sound principles of Law and is in tune with all tenets of Law. He made a valiant attempt to support the said order and has sought the dismissal of this petition with heavy costs.

5. In my view, the Law in relation to mutation entries, pursuant to civil court proceedings, is no longer *res-intergra*. This Court, in the matter of ***Shrikant R. Sankanwar and Ors. vs Krishna Balu Naukudkar, 2003 (3) Bom.CR 45*** has laid down the Law that when it comes to carrying out mutation entries, the best piece of evidence has to be considered in cases where there is no verdict of the Civil Court. In cases where the Civil Court had an occasion to deal with

the claims of the parties in relation to their right, title and interest over immovable properties, it was held that the verdict of the Civil Court would bind the revenue authorities and mutation entries, which are meant for fiscal purposes, should be carried out in tune with the verdict of the Civil Court. It was also concluded that the verdict of the Civil Court would bind the revenue authorities in matters of carrying out mutation entries and not vice-versa.

6. I find from the orders passed by the Talathi and the Tahsildar that they have demonstrated ignorance of Law. The S.D.O. rightly appreciated the fact that once the rights and title of the litigants is settled in proceedings by the Civil Courts, such verdicts would be binding upon the revenue authorities. In this backdrop, the impugned order passed by the Hon'ble Minister for State cannot be sustained as it is against the basic principles of Law.

7. The Hon'ble Apex Court has held in **Ravinder Kaur Vs. Ashok Kumar and another [(2003) 8 SCC 289]** that the Courts must be able to identify vexatious litigation. The Courts should be vigilant to see through diabolical plans of the judgment debtors to deny the decree holders the fruits of the decree. It would be apposite to reproduce the observations of the Hon'ble Apex Court in paragraph

No.22 here under :-

"22. All these facts apart, we notice that nowhere in the petition the respondents-tenants claim to be in possession of any shop other than Shop No. 3 in regard to which they have suffered an eviction order. It is not their case that they are also in possession of some other property in regard to which there is no eviction order but the landlord is trying to take possession in these execution proceedings. We have specifically asked the learned counsel appearing for the respondents that apart from Shop No.3 belonging to the appellant - are the respondents in possession of any part of property bearing No. EK 172/2 situated at Chowk Panjeer, Jalandhar. The learned counsel was not able to give any satisfactory reply to our question which would only mean that the respondents are not in possession of any other property other than Shop No.3 leased out to them in the above-mentioned property belonging to the appellant. That is also why they prayed for restoration of possession. Therefore, raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. Courts of law should be careful enough to see through such diabolical plans of the judgment debtors to deny the decree holders the fruits of the decree obtained by them. This type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing laws delay and bringing bad name to the judicial system."

8. In **Lal Devi and another Vs. Vaneeta Jain and others [(2007) 7 SCC 200]**, the Hon'ble Apex Court, while dealing with a situation of abuse of the process of Law and unfair or delaying tactics resorted to by the parties, concluded that when the parties adopt unfair or delaying tactics, the Courts have abundant powers to deal with such situations. The Courts are not helpless. The petitioner/plaintiff has run from pillar to post, leading to her exhaustion. She was 30 years old when the litigation began in 1975 and is now 74 years old, having practically spent her entire lifetime in this litigation.

9. Learned Advocate for the judgment debtors submits that they had raised an issue and it was left to the revenue authorities to apply their wisdom and knowledge of Law and pass appropriate orders. He submits that he had even succeeded before the Hon'ble Minister since the Hon'ble Minister understood the Law correctly. He, therefore, prays that these poor farmers may not be saddled with costs as presently their second generation is in litigation in view of the original defendants having passed away and one original defendant Madhavrao is now 80 years of age.

10. In view of the above, this petition is allowed. The impugned

order delivered by the Hon'ble Minister dated 21/08/2018 is quashed and set aside and Appeal No.2018/P.K.66/J-7A stands rejected. Rule is made absolute in the above terms.

11. It is made clear that in the event these defendants are found to have indulged in vexatious litigation vis-a-vis the petitioner herein, any time in future, they be saddled with heavy costs.

(Ravindra V.Ghuge, J.)