

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6743 OF 2018

Jayshree Chandrakant Koli and Ors.

...Petitioners

vs.

Kallappa Shau Shete and Ors.
(since deceased through L.R.s)

...Respondents

Mr. A.M. Adagule, for the Petitioners

Mr. P.D. Dalvi, for the Respondent No.1A.

CORAM : M. S. SONAK, J.

DATE : MARCH 18, 2019

P.C.:

. Heard Mr. Adagule, learned counsel for the Petitioners/
Judgment Debtor and Mr. Dalvi, learned counsel for the
Respondents/ Decree holder.

2. The challenge in this Petition is to the order dated 12th
January, 2018 made by the Execution Court dismissing the
Petitioners'/ Judgment Debtors' objection under Section 47 of the
Code of Civil Procedure. The execution of judgment and decree
dated 21st April, 1979 in R.C.S. No. 36/1974.

3. There is no dispute that the decree which is being executed

has attained finality. Mr. Adagule submits that decree was in respect of premises in RCS. No. 586/1. He submits that Bailiff in pursuance of execution, has in fact executed the decree in so far as the premises in RCS.No. 586/1 are concerned. He submits that the portion of the premises which now remains in the possession of the judgment debtor is RCS. No. 586/24. He submits that this portion was neither the subject matter of the suit nor the decree. He therefore submits that Executing Court should have allowed the objection raised by the judgment debtor under Section 47 of the Code of Civil Procedure and declared that the decree stand fully executed in terms of report of Bailiff. He submits that since this was not being done, the impugned order warrants interference.

4. Mr. Dalvi, learned counsel for Respondent No.1A/ decree holder defends the impugned order on the basis of reasoning reflected therein.

5. Upon due consideration of Mr. Adagule's contention and upon perusal of the record, there is no case made out for any interference in the impugned order. Admittedly, the suit premises is described as premises having area of 125 sqr. yard which

correspondence 1125 sq.ft. As per the Bailiff's report, the decree was executed in respect of the premises admeasuring 679.8 sq.ft. Admittedly, the balance portion on suit premises continues in possession of the judgment debtor. No such was defence raised by the judgment debtor that the suit premises comprise of several rooms and the room which is now in possession of the judgment debtor was not part of the dispute in the civil suit or was not otherwise covered by the decree made. The learned Executing Court has in fact recorded finding that even the room now possessed by the judgment debtor No. 2 is a part of C.S.No. 586/1 which was the subject matter of R.C.S No. 36/1974.

6. The reasoning of the learned Executing Court is reflected in paragraph 12 of the impugned order which read thus:

“Here it is to be noted that, the subject matter of the suit property in RCS No. 36/1974 was C.S.No.586/1 area 125 sqr.yard at D ward, Kolhapur within boundaries i.e. towards East House of Rajppot singh, towards West house of Ghatge, towards South the house of Plaintiff from same C.S.No. 586 and towards North Government road. However, nothing

was described therein about the constructed area in the suit property. No objection also appears to have been taken on behalf of J.D.s in that suit alleging that, the suit property consist of particular rooms. Be that as it may, having gone through the Kabjepatti Exh.33, it is seen that the Bailiff has given the possession of area admeasuring 20 ft 6 inch (East-West) x 33 ft. (south-North) to D.H. The area of which the psession was given under Kabjepatti Exh.33 comes to 679.8 sq.ft. However, the area of suit property in RCS No. 586 was 125 sqr. Yard, if converted in square feet, it comes to 1125 sq.ft. Under Kabjepatti Exh.33 Bailiff has given the possession of 679.8 sq.ft only. If these aspects are considered it prima facie leads to conclusion that, the entire area of suit property in RCS No. 36/1974 was not handed o ver to D.H under the Kabjepatti Exh.33”.

7. The execution of the decree dated 21st April, 1979 which has attained finality, several years ago, cannot be stalled on the basis of such objections. Accordingly, this Petition is liable to be dismissed and is hereby dismissed.

8. There shall be no order as to costs.

(M. S. SONAK, J.)