

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6707 OF 2019**

Chandrakala Gunaji @ Balaso Chavan & ors. ... Petitioners

Versus

Pankaj Lakshmikant Desai & ors. ... Respondents

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Mr. P.B. Shah I/b. Mr. K.P. Shah for the petitioners.

Mr. Shankar P. Thorat for respondent Nos.4 & 5.

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CORAM : M. S. KARNIK, J.

DATE : 17th JULY, 2019.

P. C.:

1. This matter pertains to the assignment of Hon'ble Shri Justice S.K. Shinde. Considering urgency the Writ Petition is taken up for hearing.

2. Heard learned counsel for the petitioners and learned counsel appearing on behalf of the respondent Nos.4 & 5.

3. The affidavit in reply by respondent Nos.4 and 5 is tendered in Court and the same is taken on record.

4. The order impugned in this Petition is an order dated 29.4.2019 passed below Exhibit 19 by the Civil Judge Junior Division, Phaltan in Regular Darkhast No.154 of 2018. This application is filed by the original defendant Nos.4 and

5 for providing police protection in order to remove illegal obstruction created by the petitioners in the suit property. The Executing Court directed the petitioners-original plaintiffs to remove illegal obstruction lying in open space. The Court while allowing the application found that in order to remove illegal obstruction police aid is necessary.

5. Brief facts leading to the filing of the Darkhast proceedings could be summarised thus :

The petitioners-original plaintiffs filed a suit for injunction restraining the respondents-original defendants from obstructing their possession over the suit premises which comprises of a store room admeasuring 12 x 11 feet and office room admeasuring 7 ½ X 11 feet. The suit was also filed for restraining the defendants from obstructing the petitioners possession over the open space adjacent to the suit property. The Trial Court by the judgment and decree restrained the respondent Nos.3 to 5 from causing obstruction to the suit rooms (store room and office room) in possession of the petitioners. However in so far as the open space is concerned, the Trial Court found that the petitioners did not prove that they are entitled to possession.

The open space is described in Para 1-B of the plaint. The Trial Court granted injunction to the extent of store room and office room. The First Appellate Court confirmed the judgment and decree of the Trial Court and the Appeal came to be dismissed. Writ Petitions filed by petitioners against the judgment and decree of the First Appellate Court came to be dismissed by this court.

6. The respondent Nos.4 and 5 applied for execution of the decree by filing Darkhast proceedings. The impugned order is passed in the course of Execution proceedings.

7. Learned counsel for the petitioner, Shri Shah submitted that decree of the Trial Court is only granting injunction in favour of the petitioners restraining the respondent Nos.4 and 5 from obstructing their possession in so far as the store room and office room. The Trial Court refused to grant injunction to the petitioner in so far as the open space is concerned. Shri Shah would invite my attention to the observations of the Courts below to indicate that the petitioners are in joint possession along with the other tenants in respect of the open space. He would further submit that there is no decree or order of any Court in favour of the respondent Nos.4 and 5 as regards handing over

possession of the open space to the respondent Nos.4 and 5. According to Shri Shah the Executing Court is going beyond what is decreed by the Trial Court. He would submit that no proceedings have been filed by the respondent Nos.4 and 5 to claim possession over the open space. According to him only if there is a decree for possession in respect of the open space in favour of respondent nos.4 and 5 can the Executing Court pass an order of the present nature and that too not in respect of a decree arising in a suit filed by petitioners. According to him the effect of the impugned order is that petitioners are sought to be dispossessed without an order of competent Court for dispossession. He would thus submit that in execution proceedings arising from a decree in plaintiffs suit at the instance of respondents is not maintainable.

8. He invited my attention to the findings of the Trial Court, Appellate Court as well as this Court. He would vehemently urge that there is no decree or order of any Court to hand over possession. For all these reasons Shri Shah would submit that the order passed by the Executing Court calls for interference.

9. Shri Thorat on behalf of respondent Nos.4 and 5 on the other hand invite my attention to the orders passed by the Courts below and findings recorded thereon. He would also rely on an order dated 7.8.2018 passed by this Court in Review Petition against the order dated 4.7.2018 passed by this Court dismissing the Writ Petition filed by the petitioners. Shri Thorat would submit that when a clear finding is recorded by the Courts below that the user of the petitioners is permissive and it does not amount to possession much less a settled possession, it is always permissible for respondent Nos.4 and 5 to apply to the Executing Court. Moreover he would submit that once the possession of the petitioners is held to be unlawful, he can not seek injunction against the lawful owner. Shri Thorat would submit that the petitioners had specifically prayed for injunction restraining respondent nos.4 and 5 disturbing the petitioners possession over the open space. For all these reasons he would submit that as the petitioners are creating obstruction, the Executing Court is justified in allowing the application.

10. I have heard learned counsel for the parties. At the outset it would be material to observe that the Trial Court while

decreeing the suit restrained respondent Nos.3 to 5 from causing any obstruction in so far as the store room and office room. The Trial Court found that the petitioners failed to prove their possession over the suit land. The Trial Court found the obstruction by respondent Nos.3 to 5 is only to the extent of two rooms after recording finding that the petitioners are tenants in respect of two rooms. The First Appellate court dismissed the Appeal filed by petitioners. It would be relevant to refer some of the observations of this Court while dismissing the Writ Petition filed challenging the judgment and decree of the First Appellate Court. It would be material to reproduce relevant portion of this Courts order which read thus :-

“15. Mr. Shah relied upon the decision of **Ram Ratan** (supra). In that case, the Apex Court held that a true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law. In the case of **Krishna Ram Mahale** (supra), the Apex Court observed in paragraph 8

that it is well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In my opinion, the said decisions are not applicable in the facts of the present case. After considering the evidence on record, the Courts below have concurrently held that plaintiffs are not tenants in respect of the entire property admeasuring 400 to 500 sq.mtrs. described in paragraph 1-B of the plaint but they are in possession of store room admeasuring 12 ft. X 11 ft. and office premises admeasuring 7 ½ ft. X 11 ft. Plaintiffs were not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Plaintiffs were also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, Petitions fail and the same are dismissed.

16. At this stage, Mr. Shah orally applies for continuation of the ad-interim order dated 08.08.2017 passed by this Court. He further submits that injunction may be continued restraining defendants from obstructing or interfering with plaintiffs' possession in respect of property described in paragraph 1-B of the plaint admeasuring 400 to 500 sq.mtrs.

17. In view thereof, notwithstanding dismissal of the Petitions, the ad-interim order dated 08.08.2017 passed by this Court shall remain in force for a period of 8 weeks from

today with clear understanding that no application for further extension shall be made and entertained by this Court. In so far as prayer for continuation of the injunction restraining defendants from obstructing possession of the plaintiffs over open space in suit premises described in paragraph 1-B of the plaint is concerned, the same is rejected. Order accordingly.”

11. Reading of the order would show that this Court has observed the petitioners are not tenants in respect of the entire property but they are in possession of the store room admeasuring 12 x 11 feet and office room admeasuring 7 ½ X 11 feet. It is further observed that the petitioners were not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record.

12. It is pertinent to note here that petitioners specifically made a request for continuing the ad-interim order passed by this Court restraining the defendants from obstructing or interfering with plaintiff's possession in respect of the suit property. This Court in Para 17 which has been reproduced here in above, clearly observed, that the ad-interim order dated 8.8.2017 passed by this Court shall continue for a period of 8 weeks and no further

extension shall be made and entertained by this Court. In so far as prayer for continuation of the injunction restraining defendants from obstructing possession of the plaintiffs over open space in suit premises described in Para 1-B of the plaint is concerned, the same is rejected by this Court.

13. It is also pertinent to note the observations made by this Court while rejecting the Review Petition No.119 of 2018 filed by the petitioners. Para 10 of the said order reads thus :-

“10. In so far as the submission that as the plaintiffs are found in joint possession along with the other tenants in accompanying Writ Petition No.8814 of 2017, this Court was not justified in issuing injunction restraining the defendants from disturbing joint possession of the plaintiffs as also dispossessing them without following the due course of law, is concerned, as noted earlier, the Courts below have held that the user of the plaintiffs is permissive and it does not amount to possession much less a settled possession. I, therefore, do not find any merit in this submission as well. In so far as the access of the suit premises is concerned, the Courts below have partly decreed the Suit as indicated hereinabove. In paragraph 11, admission of P.W.1 that open space was being used along with them by the erstwhile landlord also for ingress and egress to and from the suit property. In view thereof, no case is made out for reviewing the order dated 04.07.2018.”

14. This Court had clearly observed that the user of the petitioners is permissive and it does not amount to possession

much less a settled possession. This view of the Courts below is affirmed by this Court. There is therefore no merit in the submission of learned counsel for petitioners.

15. In this view of the matter, in my opinion, this is not a fit case where the impugned order passed by the Executing Court warrants any interference. The injunction granted by the Trial Court is restricted to the store room and office room. In such circumstances and in view the findings of the Courts below and this Court, if the defendants are seeking to remove obstruction from the open space, I do not find any illegality in the approach of the Executing Court. In my opinion, the contention of Shri Shah that the Executing Court is travelling beyond the decree is without any merit. The Petition therefore is rejected.

(M. S. KARNIK, J.)