

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9982 OF 2019

Bashirduddin Mahammad Wadekar ... Petitioner
Vs.
Ananat Mahadev Surve and Ors. ... Respondents

Mr. Mandar Limaye for the Petitioner.
Mr. Sanskar Marathe for the Respondent No.1.

CORAM : M. S. KARNIK, J.

DATE : 13th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner is the original judgment debtor No.2(d).
The respondent-decree holder filed a suit for redemption of mortgage which was dismissed by the Trial Court by the judgment and decree dated 18.9.2010. The First Appellate Court reversed the order of the Trial Court. The suit came to be decreed in Appeal and the Appellate Court directed the petitioner to handover the possession to the plaintiff. The Second Appeal filed against the judgment and decree of the First Appellate Court was dismissed on 3.5.2016. The Special Leave Petition filed before the Hon'ble Supreme Court was also dismissed. The petitioner

thereafter filed the Review Application in the Second Appeal which also came to be dismissed. In the meantime, the decree holder filed execution proceedings before the Trial Court. The judgment debtor No.2(d) filed application Exhibit 149 under Section 47 of the Code of Civil Procedure obstructing the decree. In the application it is stated that the judgment debtor No.2(d) is in possession of the suit property and the issue of tenancy as well as the issue of possession was not properly considered by the Courts. According to learned counsel for the petitioner the issue of tenancy should have been referred by the Trial Court to the Tenancy Court. He submits that this is a material irregularity.

3. By the order dated 5.8.2019 the application filed below Exhibit 149 by the judgment debtor No.2(d) came to be rejected. Pursuant thereto the Executing Court issued possession warrant on 7.8.2019 in Regular Darkhast No.6 of 2016.

4 It is the contention of learned counsel for the petitioner that Regular Civil Appeal No.69 of 2019 is filed before the District Judge against the order dated 5.8.2019 passed below Exhibit 149 and the order dated 7.8.2019 issuing possession

warrant. He would submit that as the issue of possession and the tenancy are not properly decided, till the Appeal is heard by the Appellate Court, the execution of decree be stayed.

5. I have gone through the order passed by the Executing Court. The decree in favour of the plaintiff for possession is confirmed right up to the Hon'ble Supreme Court. Even the Review filed in this Court is rejected. The issue of tenancy as well as that of possession is squarely answered in favour of the plaintiff and has been confirmed right up to the Hon'ble Supreme Court.

6. In this view of the matter, it is obvious that only with a view to protract the execution of the decree, the application is filed below Exhibit 149 raising objection that the issue of tenancy and possession is not decided in accordance with law. I am not inclined to interfere with the order passed by the Executing Court which has observed that it cannot go behind the decree.

7. Needless to mention that Regular Civil Appeal No.69 of 2019 will be decided by the Appellate Court on its own merits and in accordance with law.

8. With these observations, the petition is dismissed.

(M. S. KARNIK, J.)