

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6348 OF 2015
ALONGWITH

WRIT PETITION NO. 2287 OF 2017

1. Shri. Nana Tukaram Lokhare
since deceased through legal
heirs and Ors.Petitioners
(Orig. Judg. Debtors)
V/s.

1. Shri. Baburao Bapurao Kambale
and anr.Respondents
(Orig. Decree Holders)

Mr. Rajesh S. Patil, Advocate for the petitioners.

Mr. Prashant D. Patil, Advocate for respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 10th July, 2019.

ORAL JUDGMENT:

1. Heard learned Counsel for the parties.

2. The petitioner in both the petitions is the judgment debtor in the suit for specific performance instituted by respondent no.1 herein. The petitioners (defendants) were directed by the trial Court to execute the sale-deed of the suit land in favour of the plaintiffs after obtaining necessary permission of the Competent Authority within six months after accepting the amount of Rs.5,000/- from the plaintiffs. The decree has been confirmed in modified form by the First Appellate Court and the Second Appeal arising therefrom has been dismissed by this Court.

3. The decree holders (respondents) instituted Regular Darkhast which the judgment debtors objected to on the ground that the plaintiffs did not claim possession of the suit property and in absence thereof, the decree is

unexecutable and thus possession cannot be delivered to the decree holders. The said objection has been overruled by the executing court on 4th April, 2015. It is against this order, Writ Petition No. 6348 of 2015 is preferred.

4. Pending petition, on 22nd September, 2016 this Court passed the following order :

“In view of the objection raised by Petitioners that there is no prayer for possession made in the plaint consequently no decree, the learned counsel for Petitioners seeks time to make an application for amendment of plaint in the executing Court. Once such application for amendment is made, the learned Civil Judge will give an opportunity to Petitioners and consider

the same. Thereafter the further course of action in this Petition will be considered. Stand over to eight weeks, i.e. 17 November 2016. Ad-interim order granted earlier to continue.”

5. In view of the order stated, the decree holders requested the executing court to amend the execution application. The executing court allowed the said application vide order dated 7th December, 2016 and held that the proposed amendments are essential. Aggrieved by this order, Writ Petition No. 2287 of 2017 is preferred.

6. It is settled law that, a decree for specific performance of contract includes everything incidental to be done by one party or another to complete the sale transaction. The rights and obligations of the parties in such a matter being indicated by Section 55 of the

Transfer of Property Act, the seller is bound, on being so required by the buyer or such person as he directs such possession of the property as its nature admits. Clause (f) of Section 55 reads thus :

“55. Rights and liabilities of buyer and seller.-

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as it s nature admits.”

7. Thus, delivery of possession is a necessary ingredient and part of transfer of ownership. Therefore, where a decree for specific performance of contract is silent as to the relief of delivery of possession, the executing court is still competent to deliver possession.

8. The Counsel for the respondent has relied on the judgment of this Court in the case of **Ramchandra Guja Rewatkar Versus. Mango Vithya Koche & Ors., reported in 2015 (1) Bom.C.R. 609**, wherein it is held thus;

“that it is not necessary to specifically claim relief of possession in such for specific performance and the executing Court is competent to grant such relief. The learned Judge observed with reference to Section 22 of the Specific Relief Act that the requirement to claim the relief under Clause (a) or (b) of section 22 is qualified by the clause “in an appropriate case”. An appropriate case means a case in which the relief does not necessarily flow from the decree for specific performance of the agreement of sale. If such a relief is ancillary to and necessarily flows from a

decree for specific performance, then it is not necessary to specifically seek such a relief and the bar of section 22(2) would not be attracted.”

9. Upon consideration of the facts of the case and settled law, the petitions deserve no consideration. The trial Court has correctly applied the law and overruled the objection of the petitioner to the executability of the decree.

10. That for the reasons stated, both the petitions are dismissed.

11. The learned Counsel for the petitioner seeks stay to the execution of the possession warrant issued by the executing Court; however, upon taking into consideration the facts of the case, I am not inclined to

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stay the execution of possession warrant. The prayer is accordingly rejected.

(SANDEEP K. SHINDE, J)