

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.608 OF 2018**

Krishanand Pakira Shetty	.. Applicant
Versus	
Sadanand Pakira Shetty and ors.	.. Respondents

Mr. V.R. Tripathi for applicant.

Mr. Ramgopal Tripathi a/w Vinod Kumar Shukla I/b Kanchan Gupta for respondent Nos.1 and 2.

CORAM : K.K. TATED, J.

DATE : 7 JANUARY 2019.

P.C:-

. Heard learned Counsel for the parties.

2. By this Civil Revision Application, applicant/original plaintiff is challenging order dated 13.11.2018 passed by City Civil Court at Dindoshi, Borivali Division, Mumbai below Exhibit-4 in Execution Application No.28 of 2018 in S.C. Suit No.1312 of 2009 rejecting applicant's application under Section 47 of Code of Civil Procedure for carrying out appropriate amendment in decree in execution proceedings.

3. It is the case of the petitioner that both the parties entered into consent terms in S.C. Suit No.1312 of 2009 dated 14.07.2009. That suit was disposed of in terms of consent terms. He submits that some corrections were made in consent terms without the knowledge of the applicant. He submits that as per applicant's submission, applicant agreed to hand over the possession of the suit property after 7 years to his younger brother Jagdish Pakira Shetty and the plaintiff's niece Vinisha Ganesh Shetty equally. He submits that without the consent of applicant amendment and/or corrections had been carried out in the consent terms dated 14.07.2009 and made it mandatory that applicant should hand over possession of the suit property to the defendant No.2. Those facts were learnt to the applicant when the respondent/original defendant No.2 filed execution application No.28 of 2018. Hence, the applicant preferred an application below Exhibit-4 under Section 47 of the Code of Civil Procedure with following prayers :

“(a) That it be declared that the Consent Terms dated 22.7.2007 in the above suit is null, void, illegal, malafide, vitiated by fraud and mischief and hence the same be quashed and set aside.

(b) That pending the hearing and final disposal of the Application, the Execution Application No.28 of 2018 be stayed.

(c) Interim and ad-interim relief in terms of prayer (b) above.

(d) Cost of the Application.

(e) Such further and other relief as this Hon'ble Court may deem fit and proper.”

4. The learned Counsel for the applicant submits that trial Court erred in coming to the conclusion that, the application as filed by the applicant under Section 47 of the Civil Procedure Code is not maintainable. He submits that the trial Court erred in coming to the conclusion that the executing Court cannot go beyond the decree. He submits that the trial Court ought to have accepted the applicant's submission that he was seeking correction in the consent terms dated 14.07.2009 and not to carrying out any correction in the decree. He further submits that there is no provision under Civil Procedure Code to file a suit for challenging the consent decree, if any, passed by the trial Court. Hence, impugned order passed by the trial Court dated 13.11.2018 is required to be set aside, allowing the applicant's application below Exhibit-4 under Section 47 of Code of Civil Procedure for correcting consent terms clause No.3. He submits that if the present writ petition is not allowed, irreparable loss will cause to the applicant.

5. On the other hand learned counsel Mr. Ramgopal Tripathi appearing on behalf of respondent Nos. 1 and 2 vehemently opposed the present writ petition. He submits that applicant is his father. He submits that it was agreed between the parties as per consent terms dated 14.07.2009 that initially his father will use the suit property for 7 years and thereafter he will hand over it to the respondent No.2/original defendant No.2. He further submits that as the applicant failed and neglected to comply the terms and conditions of consent terms dated 14.07.2009 and the decree passed in the said S.C. Suit No.1312 of 2009, respondent No.2/original defendant No.2 filed Execution Application No.28 of 2018. He submits that the executing Court cannot go beyond the decree passed by the Civil Court. Therefore there is no question of entertaining the present writ petition.

6. I heard both sides at length. It is to be noted that in the present proceedings applicant filed application below Exhibit -4 under Section 47 of Civil Procedure Code. Section 47 of CPC reads thus :

“47. Questions to be determined by the Court executing decree? (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the

decree, shall be determined by the Court executing the decree and not by a separate suit.

[29]* * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[30] [Explanation : For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation : For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.”

7. Bare reading of Section 47 shows that there is no question of filing a separate suit for setting aside the consent decree. In the present proceedings though the consent terms were executed on 14.07.2009 first time in the month of October 2018, applicant filed application for correction in the consent terms and decree thereof and that also before the executing Court. There is no doubt that executing Court cannot go beyond the decree. Those facts are considered by the executing Court at the time of

dismissing the applicant's application below Exhibit-4. Considering reasons disclosed by the trial Court in paragraph 6 and 7 of the impugned order and the fact that application filed by the applicant before the executing Court for carrying out correction in the consent terms, I am of the opinion that applicant has not made out any case to entertain the present Civil Revision Application.

8. Hence, Civil Revision Application stands rejected.

9. No order as to costs.

(K.K.TATED, J.)