

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

48 WRIT PETITION NO.655 OF 2020

ALKA RAMESH PUKALE  
VERSUS  
MAHADEO VISHWANATH MUSLE AND OTHERS

...

Mr. S.J. Salunke, Advocate for the petitioner.  
Mr. M.B. Kolpe, Advocate for respondent No.1.

...

CORAM : **Rohit B. Deo, J.**

DATE : 31<sup>st</sup> January 2020.

**ORDER :-**

. Respondent No.1 Mahadeo Vishwanath Musale brought Regular Civil Suit No.50/2012 in which Dattatraya Laxman Maindarkar is impleaded as defendant No.2.

2. The suit was brought for possession on the basis of title.

3. The trial Court decreed the suit.

4. Respondent No.1 initiated execution proceeding, which is assigned Regular Darkhast No.78/2013, to execute the judgment and decree dated 08.11.2013.

5. In the execution, the petitioner Smt. Alka Ramesh Pukale, who is the daughter of defendant No.2 Dattatraya Laxman Maindarkar, filed objections purportedly under Rule

101 of Order 21 of the Code of Civil Procedure. The objection was that the suit property was joint family property, and therefore, her father Late Dattatraya Maindarkar could not have executed the sale deed in favour of Decree Holder. This objection is rejected by Executing Court.

6. Smt. Alka Pukale preferred Regular Civil Appeal No. 9/2019 in which an application was preferred for stay of execution of decree of possession. This application is rejected by the order impugned.

7. The appellate Court has given the following reasons in paragraphs 3 to 6 for rejecting the application for stay.

*“3. It has to be noted that ever since this appeal has been filed. Id. advocate Shri.V.P.Sakhare is repeatedly pointing out the age of respondent No.4 and further submitted that he is on the verge of death. Shri.V.P.Sakhare also submitted to expedite hearing of appeal, as maximum respondents are senior citizens. It has to be noted that since the beginning the conduct of appellant she had simply filed this appeal and kept it pending. Shri.V.P.Sakhare has submitted to keep the appeal for final hearing, which is not responded by the appellant and her Id.advocate. Ultimately,*

*hearing of appeal was expedited by order below Exh.1. Ld.advocate Shri.V.P.Sakhare has already filed his written argument. It is now 5.05 p.m. when appellant and her all ld.advocates on record are repeatedly called. No one turned to the court.*

*4. It has to be noted that appellants have filed this application Exh.5 and prayed to grant stay to the execution of decree in R.C.S.No.50/12. I am constrained to note that what is happened in this matter is exactly identical to the situation observed by the Hon'ble Supreme Court in **Ramrameshwari Devi Vs Nirmala Devi [(2011) 8 SCC 249]**, which is referred in **Maria Margarida Sequaria Fernandes And Others Vs Erasmo Jack De Sequeira [(2012)5 SCC 370]**, wherein the Hon'ble Supreme Court specifically referred the Roznama proceeding of 25 years and noted abuse of process of Law. I am constrained to borrow the said observations in respect of conduct of appellants. Decree in R.C.S. No.50/12 is in favour of respondents. Subsequent suit preferred by appellant Alka was dismissed. Again she agitated the same aspect by intervening the execution proceeding but once again got defeated and now preferred this appeal only to put clog on the execution proceedings of which the*

*respondents are legitimate recipients. I am of the opinion that appeal is preferred only with an intention to create obstacle and hurdles in the execution proceeding in R.C.S.No.50/12. The situation of respondent is like "Sun is there but light has gone".*

*5. I am constrained to note as such because even after expediting appeal, no one for appellant is turning to the court. Many adjournments noting health issue of ld.advocate Shri.P.M.Naleaonkar were granted. There are 4-5 juniors working in his office but no one is turning to the court to respond the call. All this clearly indicates that appellant wants to create an obstacle by hook or crook in the execution of decree in R.C.S.No.50/12 and stall the same. Order 21 Rule 97 to 101 C.P.C. are not for such purpose. Situation herein is that every time there are legal adjudications in favour of respondents corresponding defeats of the appellant. These respondents, who are rightful and legitimate recipients of a legal adjudication in their favour are unable to enjoy the fruits thereof. On the contrary, the appellant, who is defeated everywhere yet getting advantage in keeping away the respondents from enjoying the fruits. I am sure that if such situation is continued,*

*respondents would never get the real fruits of legitimate decree in their favour. In this background, though appeal is admitted, R & P is called, written argument of Id.advocate Shri.V.P.Sakhare is on record, yet, stay to the execution in R.C.S.No.50/12 is being prayed by appellants that too by keeping herself away from the court.*

*6. It has to be noted that there is nothing before the court to indicate that dismissal of appeal against judgment and decree in R.C.S.No.50/12 is challenged by the appellant herein before the Hon'ble High Court. She has not produced any documents to show any pendency before the Hon'ble High Court. I am of the opinion that this application deserves to be rejected and appeal will be heard at the leisure and luxury of appellant”.*

8. The appellate Court has found that Smt. Alka Pukale was abusing the process of law. However, even de hors the said finding, in my considered view, no case for grant of stay to execution is made out.

9. Smt. Alka Pukale instituted Regular Civil Suit No.27/2013 for partition and separate possession. It is not in dispute that the subject-matter of execution proceeding was

also one of the properties in the said suit. It is further not in dispute that the suit for partition and separate possession is dismissed. Learned Counsel for Smt. Alka Pukale states that the appeal is preferred challenging the dismissal of partition suit. Be that as it may, as the situation stands today, Smt. Alka Pukale has suffered dismissal of the suit for partition, which is extremely relevant in the context of the objection which is based on her claim that the property was joint family property.

10. The submission of learned Counsel for the Decree Holder that the objection preferred by Smt. Alka Pukale is beyond the scope and ambit of Order 21 Rule 97, Rule 99 of the Code of Civil Procedure, and therefore Rule 101 thereof is not without substance. However, I am refraining from making any decisive observation lest the parties are prejudiced in the final hearing of the appeal.

11. The petition is dismissed.

12. The appellate Court is requested to finally decide the appeal within 30 days.

**(ROHIT B. DEO, J.)**