

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 5853 of 2019

LRs of Sabdar Shaha s/o Dhudanshaha and others Vs. Zakiya Begam wd/o
Amjat Ali

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.H. Jamal, Advocate for the petitioners
Mr. R.K. Thakkar, Advocate for the respondent No.1.

CORAM : MANISH PITALE, J.

DATED : DECEMBER 15, 2020

By this Writ Petition, the petitioners have challenged order dated 7th June, 2019, whereby an application filed on behalf of the petitioners seeking restoration of possession under Section 151 of the Civil Procedure Code, 1908, has been rejected.

2. The facts giving rise to the present Writ Petition, in brief, are that the respondent herein had purchased a specific piece of land from the petitioners as per registered sale deed dated 20th April, 1992. She was put in possession of the land, which was subject matter of the said sale deed. It was the case of the respondent that subsequently, the petitioners sought to

disturb her peaceful possession, as a consequence of which, she was constrained to file a suit before the Trial Court against the petitioners. There is no dispute about the fact that the suit was decreed and the said decree was upheld in the First Appeal filed by the petitioners.

3. Thereafter, the petitioners approached this Court by filing Second Appeal No.413 of 2009, which was admitted on 05/04/2010, upon framing of substantial question of law. This Court granted interim stay of the execution of the decree.

4. Thereafter, the aforesaid Second Appeal was disposed of by this Court by passing the following order on 02/03/2017.

“CORAM : R.K. DESHPANDE, J.

DATE : 2nd MARCH, 2017.

Heard the learned counsels appearing for the parties.

It is not in dispute that the open plot admeasuring 30X55 ft. out of sheet No.37, Chalta No.12, Municipal Property No.419 was sold by the defendants to the plaintiff for total consideration of Rs.12,000/- by registered sale-deed dated 20.04.1992 and the plaintiff was put in possession of the said property. The defendants do not intend to disturb the possession of the plaintiff over the said

property. The statement shall be binding upon them. The plaintiff shall be at liberty to get his land/property measured and to put a compound to it, so that the obstruction is not created. Nothing survives in the suit filed and hence it is dismissed. Second appeal does not survive and becomes infructuous. It is dismissed as such.”

5. Thereupon, the respondent approached the Executing Court on the basis of the statement made by the petitioners before this Court that they do not intend to disturb the possession of the respondent over the property, which was subject matter of the aforesaid sale deed. In the above quoted order, liberty was reserved for the respondent to get the property measured and to put a compound thereon so that obstruction would not be created. The Executing Court allowed the said application and appointed the Taluka Inspector of Land Records (TILR), for measurement and a further direction was given that the Court Bailiff should remain present at the time of measurement and execute the possession warrant simultaneously. According to the respondent, this exercise was completed and she was put in possession of the land, which was subject matter of the said sale deed and a compound was erected by her.

6. Thereafter, the petitioners filed the aforesaid application for restoration of possession on the ground that this Court in the above quoted order

dated 02/03/2017, had dismissed the suit and, therefore, no proceedings before the Executing Court could survive and possession handed over to the respondent in pursuance of an application moved before the Executing Court was unacceptable. It was claimed that, therefore, the petitioners deserved to be granted restoration of possession. Reference was made to an order dated 25/07/2018, passed by this Court in Writ Petition No. 2094 of 2018, wherein the direction of the Executing Court was challenged and this Court had held that the execution proceeding itself was not maintainable in view of the dismissal of the suit.

7. By the impugned order, the Court below has rejected the application and the petitioners are before this Court aggrieved by the same.

8. In this petition, the learned counsel appearing for the petitioners has reiterated that a perusal of the order dated 02/03/2017, would show that the suit was dismissed. It is also reiterated that this Court had dismissed Writ Petition No.2094 of 2018, by order dated 25/07/2018, holding that execution proceeding was not maintainable in view of dismissal of the suit. On this basis, it was submitted that the exercise carried out after disposal of the Second Appeal on 02/03/2017, was itself unsustainable and that, therefore, possession acquired by the respondent in pursuance thereto was illegal and

the petitioners deserved to be granted restoration of possession. On this basis, it was submitted that the impugned order deserved to be quashed and set aside and the application (Exh.1) filed on behalf of the petitioners deserved to be allowed.

9. On the other hand, the learned counsel appearing for the respondent submitted that a perusal of the order dated 02/03/2017, passed by this Court would show that this Court observed that the suit was dismissed on the ground that nothing survived in the suit, in view of the statement made by the petitioners before this Court that they did not intend to disturb possession of the respondent over the property, which was subject matter of the aforesaid sale deed. The learned counsel also emphasized that liberty was reserved for the respondent to get the land measured and put a compound thereon so that obstruction would not be created in future. It was also emphasized that the Second Appeal itself was dismissed as infructuous in view of the statement made by the petitioners before this Court. It was further submitted that if the true spirit of the order dated 02/03/2017, was to be appreciated, the respondent in pursuance of the said order was entitled to be put in possession of the land, which was subject matter of the aforesaid sale deed and she was entitled to put the compound thereon. According to the learned counsel for the respondent, the exercise that was undertaken after the order dated

02/03/2017, was passed by this Court was in pursuance of the directions in the said order and that, therefore, there was no question of the petitioners seeking restoration of possession. It was submitted that the order passed by this Court in Writ Petition No.2094 of 2018, would not come in the way of the respondent for the reason that the petitioners themselves had specifically made a statement before this Court, which was binding upon them. It was further submitted that in pursuance of the directions given by this Court by order dated 25/02/2020, now a measurement report was on record clearly showing that the respondent is in possession of the specifically demarcated portion of land admeasuring 139 sq.mtr., which was subject matter of the aforesaid sale deed. It was emphatically submitted that the respondent does not intend to have possession of land even an inch more than the land, which was sold to her under the aforesaid sale deed.

10. Heard learned counsel for the rival parties and perused the material on record.

11. There is no dispute about the fact that the Second Appeal filed by the petitioner stood disposed of as per the above quoted order dated 02/03/2017. A lot would turn on the language used by this Court while disposing of the aforesaid Second Appeal. It is clear from what is recorded in the aforesaid order passed by this Court that the dispute pertained to the

plot of land, which was sold by the petitioners to the respondent by registered sale deed dated 20th April, 1992. It is in the context of the said piece of land that a statement made by the petitioners was recorded by this Court. The statement in its purport is loud and clear that the petitioners did not intend to disturb the possession of the respondent over the said property, which was subject matter of the aforesaid sale deed. This Court specifically directed that the aforesaid statement shall be binding upon the petitioners. Significantly, this Court also reserved liberty for the respondent to get the property measured and to put a compound on the same so that obstruction was not created. It is in the backdrop of recording of the aforesaid statement and liberty so reserved for the respondent that this Court found that nothing survived in the suit and, therefore, it was dismissed. Interestingly, it was also observed by this Court that nothing survived in the Second Appeal, as it became infructuous and the Second Appeal was also dismissed.

12. The question is whether the petitioners can take advantage of the language used by this Court in the order dated 02/03/2017, while disposing of the aforesaid Second Appeal. The petitioners have harped upon the fact that this Court dismissed the suit by the aforesaid order, ignoring the fact that this Court also dismissed the Second Appeal. Dismissal of the Second Appeal would mean that the decree passed in favour of

the respondent stood confirmed, but, in view of the specific solemn statement made to this Court by the petitioners, this Court recorded in the aforesaid order dated 02/03/2017 that the Second Appeal did not survive, that it had become infructuous and, therefore, it was dismissed, as such.

13. This Court is of the opinion that the true purport and intent of the order dated 02/03/2017, passed by this Court in the Second Appeal needs to be taken to its logical end. Notwithstanding, what is observed by this Court while dismissing the Writ Petition No.2094 of 2018, wherein it is held that the execution proceeding was not maintainable in the light of the fact that the suit was dismissed, this Court is clear that intent of the order dated 02/03/2017, must be taken to its logical end so that rule of law prevails. This Court is of the opinion that measurement carried out by TILR and action of the Bailiff putting the respondent in possession of the land that was subject matter of the aforesaid sale deed and the respondent placing a compound thereon, is in true and complete satisfaction of the order dated 02/03/2017, passed by this Court.

14. Looked at from this angle, there can be no doubt about the fact that the application filed on behalf of the petitioners purportedly under Section 151 of the Code of Civil Procedure, 1908, seeking restoration of

possession was mischievous and a way to circumvent the solemn statement made before this Court and recorded as such in the order dated 02/03/2017.

15. In fact, this Court passed order on 25/02/2020, only to satisfy its conscience that the respondent was not in possession of land other than the piece of land sold to her under the aforesaid sale deed. In pursuance of the said order, measurement was carried out and report along with map was placed on record. Although the learned counsel for the petitioners have handed over submissions in respect to the said report, which are taken on record, this Court is of the opinion that the aforesaid report and map demonstrate facts that are in favour of the respondent herein. A perusal of the same shows that portion specifically marked and found in possession of the respondent is indeed 139 sq.mtr., which was the piece of land sold by the petitioners to the respondent under the sale deed dated 20th April 1992. This Court is fully satisfied that the possession of the respondent in the piece of land around which she has erected a compound, is in complete satisfaction of the order dated 02/03/2017, passed by this Court while disposing of the Second Appeal No. 413/2009.

16. In view of the above, this Court is of the opinion that no error can be attributed to the impugned order passed by the Court below. The Writ

Petition is found to be without any merit and it is dismissed.

JUDGE

MP Deshpande