

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

989 WRIT PETITION NO.4078 OF 2021

**MRUDALABEN W/O MANOHARLAL BABARIA AND OTHERS
VERSUS
M/S CHHALLANI GINNING AND PRESSING FACTORY THR ITS PARTNER
JAINENDRA INDERCHAND CHHALLANI AND OTHER**

...
Advocate for Petitioners : Shri Waramaa B.R.
Advocate for Respondent No. 1 : Shri Patni Pramod F.
...

CORAM : N.J. JAMADAR, J.

DATE : 05/03/2021

P.C. :

1. The petitioners-original defendant Nos. 4 to 6/Judgment Debtors in Execution Petition (Special Regular Darkhast No. 33 of 2017) have invoked the writ jurisdiction of this Court. Being aggrieved by the order dated 12th March, 2020 passed by the Executing Court, on an application (Exh. 13) preferred by the petitioners to reject the execution qua petitioners contending that the decree in Special Civil Suit No. 26 of 2014 does not provide for the delivery of possession by the petitioners and, thus, the possession of the suit premises cannot be recovered from them.

2. By the impugned order the executing Court was persuaded to reject the application holding that the petitioners were under an obligation to deliver the vacant possession of the suit property to the

plaintiff-respondent No. 1, under the terms of the decree.

3. Heard Shri Waramaa B.R., learned counsel for the petitioners and Shri P.F. Patni, learned counsel for the respondent No. 1.

4. Mr. Waramaa, the learned counsel for the petitioners, took the Court through the impugned order. It was urged with a degree of vehemence that the executing Court committed a manifest error in arriving at the conclusion that the petitioners were under an obligation to deliver the possession as the Court had held that the petitioners were not bonafide purchases of the suit property for value. Mr. Waramaa, the learned counsel for the petitioners, would submit that the learned Civil Judge misconstrued the import of the said finding. It was not germane for the determination of question as to whether the decree is executable qua petitioners. Inviting the attention of the Court to the decree in Special Civil Suit No. 26 of 2014 dated 24th July, 2017, it was submitted that the Court had directed only defendant No. 1 to deliver the vacant possession of the suit property. The petitioners were not ordered to deliver possession of the suit property despite the fact that the petitioners (defendant Nos. 4 to 6) were in actual physical possession of the suit property. As no decree for delivery of possession was passed against the petitioners, it was incumbent upon the plaintiff/Respondent No. 1 to file an appeal or Cross-Objection in the appeal preferred by the defendants,

and seek the said relief. In absence thereof, the decree cannot be executed against the petitioners, submitted Mr. Waramaa.

5. Indisputably, the suit for specific performance of contract to sale suit property i.e. plot No. 49, CTS No. 13158/6, came to be decreed by the Trial Court by the judgment and decree dated 24th July, 2017. An appeal preferred by the defendants being First Appeal No. 3565 of 2017 came to be dismissed on 3rd January, 2019, by this Court. A Special Leave Petition preferred there against by the petitioners/defendants was also dismissed by the Supreme Court. The respondent No. 1- plaintiff put the decree to execution in Special Darkhast No. 33 of 2017.

6. It would be advantageous to note the operative order in Special Civil Suit No. 26 of 2014, in terms of which the decree came to be drawn.

“ORDER

- 1) Suit is decreed with cost.
- 2) Defendant No. 1 is hereby directed to execute registered sale deed of suit property i.e. plot No. 49, CTS No. 13158/6, which is more particularly described in the para No. 2 of the suit in favour of plaintiff by accepting remaining consideration amount of Rs. 11 Lacs within 90 days from the date of order and do deliver the vacant possession of suit property in favour of plaintiff.
- 3) In case defendant No. 1 failed to execute registered sale deed of suit property then Assistant Superintendent of this Court shall

execute conveyance in favour of plaintiff upon depositing remaining consideration amount of Rs. 11 Lacs in the Court.

4) Defendant No. 4 to 6 are hereby directed to join as consenting party of the registered sale deed.

5) Decree be drawn up accordingly.”

7. In the light of aforesaid nature of the decree, I find it rather difficult to accede to the submission on behalf of the petitioners that the decree for possession is not executable qua petitioners. The Trial Court had specifically directed defendant Nos. 4 to 6- petitioners herein, to join in the execution of the conveyance by the defendant No. 1 in favour of the plaintiff.

8. The legal position as regards the impleadment of the subsequent transferee of the Vendor in a suit for specific performance is fairly well settled. Indisputably, a decree for specific performance can be executed against the person who claims through the Vendor. Subsequent transferee is joined as party defendant to the suit so that the subsequent transferee can be directed to join in the execution of conveyance and pass on complete title to the person in whose favour the decree for specific performance is passed.

9. It is equally well settled that in a suit for specific performance the plaintiff is not enjoined to seek a decree for possession. Section 22 of

the Specific Relief Act, envisages that such relief of possession may be sought “in an appropriate case.”. Ordinarily, the relief of possession flows from and is incidental to the relief of specific performance of the contract.

10. In this context, the reliance placed by Shri Patni, the learned counsel for the respondent No. 1, on the judgments of this Court in the cases of **Prataprai Trambaklal Mehta vs. Jayant Nemchand Shah and othrs – 1996 (2) Mh.L.J. 885** and **Lotu Bandu Sonavane vs. Pundalik Nimba Koli – [1985 Mh.L.J. 359]**, appears to be well founded.

11. In the case of **Prataprai** (supra) it was observed that a decree for specific performance of contract includes everything incidental to be done by one party or another to complete the sale transaction. After referring to the provisions contained in Clause (f) of Section 55 (1) of the Transfer of Property Act it was, in terms, observed that where a decree for specific performance of contract is silent as to the delivery of possession, the executing Court is still competent to deliver possession.

12. In the case of **Lotu Bandu** (supra) it was observed as under :

“If the defendant is in possession of the property agreed to be sold and the decree directs a specific performance of the agreement of sale, the defendant is bound to execute the sale deed as per the decree and to put the plaintiff in possession of

the property as contemplated by Section 55 (1)(f) of the Transfer of Property Act. In such a case it is not necessary to specifically claim the relief of possession in the suit.”

13. The case at hand stands on a higher footing. Not only the person through whom the petitioners claim has been directed to execute the conveyance and deliver the possession of the suit property but the petitioners have also been specifically directed to join in the execution of the conveyance. In the aforesaid view of the matter, there does not seem to be any infirmity in the impugned order passed by the learned Civil Judge.

14. For the foregoing reasons, no interference is warranted in the exercise of writ jurisdiction.

15. The petition stands dismissed.

(N.J. JAMADAR)
JUDGE