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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.8 OF 2021

Radhakishan s/o Baburao Babar,
Deceased, through L.Rs.
Mathurabai Radhakishan Babar & ors. ... **APPLICANTS**

VERSUS

Nandkishore Chhanganrao Khardekar ... **RESPONDENTS**

.....
Shri Y.K. Bobade, Advocate for applicants
Shri M.R. Sonawane, Advocate for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 14th December, 2021

Date of pronouncing order : 23rd December, 2021

ORDER :

The challenge in this revision is to the order dated 2/3/2020, passed by the Court of Civil Judge, Senior Division, Jalna on application Exh.36 in decree execution proceedings, being Regular Darkhast No.220/2018.

2. The applicants herein are the legal representatives of the original defendant/ Judgment Debtor (J.D.) in the Rent

Control proceedings, decided on 23/10/1989. By virtue of the judgment and decree passed in the said proceedings, the predecessor-in-title of the applicants herein was directed to vacate the suit premises, bearing No.1390 (Old) – 1391 (New), situated at Modikhana, Jalna. The order in this revision application has been passed in the proceedings for execution of the decree passed in the said proceedings.

3. Heard. Learned counsel for the applicants would submit that, an application under Order XXI Rule 23(2) was moved by these applicants before the Executing Court. The Court ought to have given them an opportunity to produce evidence in support of their claim. According to him, no document pertaining to the house property bearing No.1390 (1391 – New) was submitted. Whatever document was submitted in relation to the said property stood in the name of one Mohan Tatya. The applicants herein produced documents to show that the house property No.1390 (1391 – New) has been converted into property bearing City Survey No.1419. The said property stands in the name of Laxminarayan Girmayya and Babulal Advile. None of them is Decree Holder (D.H.). The respondent herein (D.H.) was neither owner of the said property nor an agent of Laxminarayan or Babulal to

seek execution of the decree. The applicants are the tenants of the house owned by Mohan Taty. The learned counsel took this Court through the documents on record to submit the respondent (D.H.) to have no right, title and interest in the property, the possession of which was sought to be recovered in the execution proceedings. The learned counsel, therefore, urged for allowing the revision application with a direction to the Executing Court to grant the applicants an opportunity to lead evidence.

4. Learned counsel for the respondent (D.H.) would, on the other hand, submit that, it is an attempt on the part of the applicants to stall the execution of the decree, they are bound by. He took this Court through the order passed by the Executing Court to ultimately submit for dismissal of this application.

5. Order XXI Rule 23 reads as under :

23. Procedure after issue of notice:-

(1) Where the person to whom notice is issued under Rule 22 does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

6. The respondent (D.H.) had initiated proceeding for recovery of possession of the house property bearing No.1390 (1391 – New) against the predecessor-in-title of the applicants herein. The applicants herein are none other than a widow and major sons of the deceased Radhakishan, against whom the said proceeding was initiated. Admittedly, a decree/ order directing Radhakishan to hand over vacant possession of the said house property to the respondent (D.H.) was passed in October 1989 itself. The record indicates that, Radhakishan had preferred an appeal challenging the order dated 23/10/1989. Later on, in November 1994, he withdrew the said appeal. After he having realised his mistake in withdrawing the appeal, a Writ Petition (No.2602/1994) was preferred. The applicants herein were the petitioners through deceased Radhakishan. The Writ petition was allowed on 14th July, 2017, granting the applicants herein liberty to move the concerned District Court for restoration of their appeal. It appears that, the applicants did not avail that liberty. As such, the decree/ order dated

23/10/1989, directing the delivery of possession of the house property to the respondent (D.H.) became final. The said decree execution proceedings were initiated by the respondent (D.H.). In response to the notice issued in the said proceedings, the applicants herein appeared and filed the application, which has been rejected vide the impugned order.

7. The Executing Court has specifically observed that the issue as to proper description and identification of the suit property had already been raised by the applicants herein vide application Exhibits 11 and 27. The said objection has already been turned down and by virtue of principle of res judicata, the same cannot be allowed to be raised again. No submissions on this point have been made before this Court.

8. As regards ownership/ title of one Mohan Tatya to the property No.1390 (1391 – New) is concerned, the documents placed on record have been duly appreciated by the Executing Court to find that Mohan Tatya had filed Regular Civil Suit No.510/1990 against the respondent (D.H.) and predecessor-in-title of the applicants and others for partition and separate possession of the properties including the subject property. The suit was dismissed in December 1999.

By virtue of dismissal of appeal (No.158/2013), the decree dismissing the suit of Mohan Tatya became final. The Executing Court has reproduced the observations in the judgment passed in Regular Civil Suit No.510/1990. For better appreciation, the same are reproduced below :-

“Further Nandkishor defendant No.4 has proved that he purchased half portion of houses No.1390 and 1391 from Laxminarayan and so also Shankar Pawar purchased other half portion from Laxminarayan and thereafter Nandkishor purchased that other half portion from Shankar. In support Nandkishor has examined scribe of the sale deeds of above transaction which are Exh.235, 236 and 237. The scribe has proved the sale deeds and deposes that he had written the sale deeds as per instructions of Laxminarayan and Shankar Pawar. This evidence is also unchallenged and un rebutted.

23. Thus, it is seen that plaintiff has failed to prove that the sale deeds are illegal, void and binding on him and on the other hand defendants have succeeded in proving that they have purchased the suit houses bonafidely and by executing valid registered sale deeds... ”

9. As such, in the said suit, the claim of ownership of Mohan Tatya to the subject property came to be rejected, holding the respondent (D.H.) to be the owner of the said

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property No.1390 (1391 – New).

10. The respondent (D.H.) then admittedly filed the Rent Control proceedings for possession of the subject property. The decree passed therein attained finality. The applicants herein are claiming through the J.D. Radhakishan and are, therefore, bound by the said decree. The Executing Court has rightly found the claim raised by the applicants herein to be unsustainable. This Court finds no reason to interfere therewith in exercise of revisional jurisdiction.

11. In the result, the Civil Revision Application fails. The same is dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-