

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.707 OF 2020**

Deepak Rajaram Gopal and Ors.

... Petitioners

V/s.

Jashwant P. Thacker

Deceased and Ors.

... Respondents

Mr.Sachin Chavan, Advocate for Petitioners.

Mr.Priyadarshan V. Shah, Advocate for Respondent No.6.

CORAM : A.S. GADKARI, J.

DATE : 24th August, 2021.

PC. :

1. By the present Petition under Article 227 of the Constitution of India, the Petitioners a third party claiming to be obstructionist, have impugned Order dated 6th January 2020 passed below Exh.63 in MARJI Application No.21 of 2016 in Execution Application No.264 of 2010 in L.E. & C. Suit No.499/545 of 1987, thereby rejecting the said Application by the learned Judge, (C.R. No.23), Small Causes Court, Mumbai.

2. Heard. Mr. Chavan, learned counsel for the Petitioners and Mr. Shah, learned counsel for the Respondent No.6. Perused record.

3. The record indicates that, in pursuance of the Judgment and Decree dated 30th November, 2009, passed by the Appellate Court in Appeal

No.798 of 2004, the Respondents filed Execution Application. The Judgment and Decree passed by the Appellate Court was affirmed by this Court by its Order dated 5th April 2010 in Civil Revision Application No.101 of 2010. The Respondents thereafter executed the said Decree by filing Execution Application No.264 of 2010 and by following due process of law. The possession of the suit premises has been taken through the bailiff of the Court appointed in that behalf. The Petitioners have thereafter filed MARJI Application No.21 of 2016, claiming to be third party and with a further contention that, the Decree is executed on wrong premises.

4. It is the settled position of law that, if a decree is executed by adopting due process of law through the Court, it is presumed that, it is executed on the premise mentioned in the Judgment and Decree passed by the Competent Court of jurisdiction. By the Application filed below Exh.63, the Petitioners were intending to lead evidence to substantiate their claim. The Trial Court has recorded finding that, there is collusion between the Petitioners and Original Defendants. The petitioners are intending to conduct a full fledged enquiry beyond the scope of Decree. It is further observed that, if the said Application would have been allowed, serious prejudice, loss and inquiry would have been caused to the original Plaintiffs.

5. I find substance in the observations made by the Trial Court. Even otherwise, the suit was of the year 1987 and the Respondents are facing

litigation for last more than 30 years. The Petitioners in connivance with the original Defendants are trying to frustrate the Decree passed in the year 2009 by adopting dilatory tactics and filing frivolous Applications. The contentions raised by the Petitioners are certainly beyond the scope of Decree and can not be accepted. The impugned Order is purely an interlocutory Order.

6. The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be

very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

7. After taking into consideration the entire material available on record, this Court is of the view that, the Trial Court has not committed any error either in law or on facts while passing the impugned Order dated 6th January 2020 below Exh.63. This Court finds that, there are no merits in the Petition. Petition is accordingly dismissed summarily.

[A.S. GADKARI, J.]