

RAJSHREE
KISHOR
MORE

Dnyanoba Sakharam Chandere] ...Petitioner.
V/s.

Anish Rajanikant Javheri & Ors.] ...Respondents.

CORAM : N.R. BORKAR, J.
DATE : 21.08.2021.

1] This petition takes an exception to the order dated 7.7.2016 passed by the learned 2nd Joint Civil Judge, Senior Division, Pune, below Exhibit-1 in Regular Darkhast No. 1153 of 2012.

2] The petitioner herein alongwith respondent Nos. 3 to 10 had filed suit for declaration and injunction in relation to land bearing Survey No.99/2 against the respondent Nos.1 and 2 and 11 to 14. The respondent Nos.1 and 2 herein had filed counter claim seeking injunction against the Petitioner and respondent Nos.3 to 10. The Trial Court dismissed the suit filed by the petitioner and respondent Nos.3 to 10 and decreed the counter claim filed by the respondent Nos.1 and 2. The operative order reads thus:

- “1) *Suit stands dismissed with cost;*
 2) *Counter Claim of Defendant No.5 and 6 decreed with cost;*
 3) *Plaintiffs and any persons on their behalf are hereby permanently restrained from disturbing legal title and lawful possession of the Defendant Nos.5 and 6 over the Survey No. 99/2;*
 4) *Plaintiffs are hereby directed to pay compensation cost to the Defendants.”*

3] The first appeal filed by the Petitioner against the above said Judgment and decree is pending before this Court.

4] Pursuant to the above said decree, the respondent Nos.1 and 2 herein had filed execution proceedings. In the said execution proceedings, an application was taken out alleging that the judgment debtors are disturbing the lawful possession of the decree holders over the suit property and following prayer was sought :

“a) Police protection may be given to the decree holders for implementation of the Judgement and decree dated 22 Nov 2004 passed by in Special Civil Suit No. 1263 of 1998 which is put under execution and necessary directions be given to the office of Superintendent of Police (Rural) and Hinjewadi Police Station.”

5] The executing Court allowed the said application dated 7.10.2011 and passed the following order below Exhibit-1:

*“1} Application dtd.7/10/2011 is allowed.
 2} Police protection be given to Decree Holder as claimed on payment of necessary charges and availability of the police officials.”*

6] The learned counsel for the petitioner submits that the decree of permanent injunction is not executable like decree of possession or mandatory injunction and therefore, there arises no question of granting of police protection for execution of the decree of permanent injunction. It is submitted that in case of disobedience of the decree of permanent injunction by the Judgment debtor, he can be put under detention or his property can be attached in terms of Order 21 Rule 32 of the Code of Civil Procedure. It is submitted that the order impugned thus needs to be quashed and set aside.

7] On the other hand, the learned counsel for contesting respondents submits that the Executing Court was justified in passing the order of police protection in view of interference caused by the judgment debtors with the possession of the respondent Nos.1 and 2 over the suit property. It is submitted that, the Petition, therefore, needs to be dismissed.

8] The learned counsel for the Petitioner is right in submitting that the decree of permanent injunction is not executable like, decree of possession or for that matter decree of mandatory injunction. Therefore, in my view there arises no question of granting police protection to execute the said decree. If according to the respondent Nos.1 and 2, the Petitioner has interfered with their possession and thereby disobeyed the decree, then only prayer which can be made in terms of Order 21 Rule 32 is to put the Petitioner in detention or attach his

properties. In the result, the following order is passed :

- a] Writ Petition is allowed;
- b] The order impugned dated 7.7.2016 is quashed and set aside;
- c] The respondent Nos.1 and 2-decree holders are at liberty to file application making prayer in terms of Order 21 Rule 32 of CPC, if at all there is disobedience of decree in their favour;
- d] Needless to mention that if such an application is filed by the respondent nos.1 and 2, the Executing Court shall decide the said application on its own merits and in accordance with law.

[N.R.BORKAR, J.]