

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

Writ Petition No. 1257 of 2021

Sau. Chanda W/o Raju Kusram and Others
Vs.
Nilkkantha Motiramji Metange

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

Court's or Judge's orders

Mr. S.U. Bhuyar, Advocate for the petitioners
Mr. S.M. Vaishnav, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : JUNE 28, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this Writ Petition, the petitioner has challenged orders passed by the Court of Civil Judge (Senior Division), Amravati, in execution proceedings. The objection to the execution filed on behalf of the petitioners along with an application for framing issue and determination of objection, were dismissed by the impugned orders.

3. In the present case, the respondent had filed a suit against one Raju Narayan Kusram for possession, injunction and declaration. The respondent stated before the Trial Court that the defendant i.e. Raju Narayan Kusram had no right in the suit property.

According to the respondent, the suit property was initially owned and registered in the name Usha Nilkantha Metange i.e. wife of the respondent No.1 and that after her death on 19/09/1997, the respondent had become successor to the said property. It was stated before the Court that said Raju Narayan Kusram was only a cousin brother of said Usha and that, he had absolutely no right to continue in possession of the suit property.

4. Despite service of summons, the original defendant i.e. Raju Narayan Kusram failed to appear and contest the suit and eventually on 11/01/2016, after proceeding ex-parte, the Court partly decreed the suit and the said defendant was directed to hand over possession of the suit property to the respondent within two months of the decree.

5. The petitioners herein are the wife and children of Raju Narayan Kusram i.e. judgment debtor under the aforesaid judgment and decree passed by the Trial Court. Initially, the petitioners had filed an application for setting aside the ex-parte decree along with an application for condonation of delay. The said application for condonation of delay was granted, against which the respondent approached this Court by filing Writ Petition No. 129/2018. By an order dated 09/01/2019, the aforesaid Writ Petition filed by the respondent was allowed and the order passed by the Trial Court condoning delay was quashed and set aside and it was held that the petitioners herein were not

entitled to maintain the proceedings before the Trial Court in respect of the aforesaid decree.

6. Thereafter, the petitioners filed the aforesaid objection and the application for framing of issues in the objection under Section 47 R/w Section 151 of the Code of Civil Procedure along with Order 21 Rules 97 to 101 of the Code of Civil Procedure. The petitioners claimed that the judgment debtor has been missing since 17/05/2014, in respect of which written complaint was given to police on 06/07/2016. It is claimed in the said proceedings initiated before the Executing Court that the respondents are entitled to object to the execution of the said decree and that, therefore, specific issues need to be framed by the Executing Court.

7. The Court below i.e. the Executing Court has rejected the applications by impugned orders dated 01/01/2021 and 21/01/2021. The Executing Court has held that the petitioners are not claiming any independent right, title and interest in the suit property and they moved said applications only on the basis that they are legal heirs of original defendant i.e. Raju Narayan Kusram. The Executing Court found that in such a situation, in terms of the settled law, the petitioners are bound by the decree and since they are not raising any independent right or interest in the suit property, there is no question of their being permitted to lead evidence in respect of the objections raised on their behalf. On this basis, the Executing Court has

passed the impugned order.

8. Mr. S.U. Bhuyar, learned counsel appearing for the petitioners submitted that the Executing Court has committed an error for the reason that the decree passed against the original defendant on the face of it is not sustainable, as there is material to show that the property in question could not have been succeeded to by the respondent herein. According to the petitioners, the right claimed by the respondent was not sustainable in law and that there was material to show that the property in question was in fact inherited by the parents of Usha i.e. the person in whose favour the property was originally registered. On this basis, it was submitted that the decree could not be executed against the petitioners. Reliance was placed on judgment of this Court in the case of **Shripati Ganpati Jadhav & Others vs. Chandrakant Ganpati Jadhav & Others 2011(2) Mh.L.J. 689**.

9. The respondents appeared on Caveat and, therefore, issuance of notice was dispensed with and the learned counsel appearing for the Caveator / sole respondent was heard. Mr. S.M. Vaishnav, learned counsel appearing for the respondent submitted that the Court below was justified in passing the impugned orders and that a proper application of relevant provisions of law and the judgments of this Court as well as the Hon'ble Supreme Court would show that the present Writ Petition deserves to be dismissed. It is brought to the notice of this Court that admittedly the

petitioners even today are claiming through the original judgment debtor as his legal heirs and that, therefore, the contentions on their behalf cannot be considered at all. It is submitted that the petitioners have failed to show any semblance of independent right, title or interest in the suit property and, therefore, the impugned orders passed by the Court below are justified. The learned counsel has placed reliance on the judgments of the Hon'ble Supreme Court in the case of **Samsher Singh and another Vs. Lieutenant colonel Nahar Singh (Dead) (2019) 17 SCC 279; Prabhakar Adiga Vs. Gowari and Others (2017) 4 SCC 97 and Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another (1998) 3 SCC 723**, as well as judgments of this Court in the cases of **Kailashchandra Kedarmalji @ Kedarnath Agrawal Vs. Kochaveedu Varghese Joseph and another 2019 (1) Mh.L.J. 682** as also **Jagdish s/o Motilal Joshi Vs. Chandrapal s/o tulsiram Bhola and another 2007(1) Mh.L.J. 402**.

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

11. The admitted position on the facts of the present case is that the petitioners are claiming as legal heirs of the original defendant / judgment debtor. There is no dispute about the fact that the original judgment debtor suffered the aforesaid decree dated 11/01/2016, which has been put to execution by the respondent (decree holder) herein. The petitioners are not claiming any independent right, title or interest

in the suit property and they claim to be entitled to continue in possession of the suit property merely because the petitioner No.1 claims to be wife of the original judgment debtor and petitioners No.2 and 3 are claimed to be his children. This is an important factor for considering the correctness or otherwise of the impugned orders passed by the Court below. The learned counsel appearing for the petitioners repeatedly harped upon how the decree passed against the original defendant could not be sustained. But, he could not point out any material to show as to whether the petitioner had any semblance of any independent right, title or interest in the suit property. The Executing Court obviously cannot go behind the decree to examine its correctness or otherwise. This Court is not at all satisfied that there is even an iota of material to indicate that the decree in any manner was obtained by fraud. Therefore, reliance placed by the learned counsel appearing for the petitioners on the judgment of this Court in the case of **Shripati Ganpati Jadhav & Others vs. Chandrakant Ganpati Jadhav & Others** (supra), can be of no help to the petitioners because it is based on facts that are not comparable at all.

12. On the other hand, the judgments of the Hon'ble Supreme Court and High Court upon which the learned counsel for the respondent has placed reliance indicate the scope of jurisdiction of the Executing Court under Order 21 Rules 97 to 101 of the Code of Civil Procedure. It has been held categorically

that the Executing Court can certainly decide the question whether the person resisting or obstructing a decree is bound by a decree, which is kept for execution. It is specifically held that when the objector claims right in the suit property through the judgment debtor then the Executing Court cannot go behind the decree and an objection can be sustained when the judgment debtor claims a status independent of that of the judgment debtor. It is held that when the Court finds that the objector is indeed claiming through the judgment debtor and not on the basis of any independent right, then if the Court proceeds to enter into further enquiry it would amount to entering into the merits of the decree, which can only be decided in appellate proceedings. It has been emphasized that the scope of the enquiry of the Executing Court will depend upon the nature of the claim pertaining to the source of title. When the objector does not even claim an independent right in the suit property then any further enquiry into the matter is rendered wholly unnecessary.

13. In these judgments, the Hon'ble Supreme Court has also referred to Section 50 of the Code of Civil Procedure while observing that a decree can be executed by the legal representatives of a deceased decree holder and equally such a decree is binding on the legal representatives of the deceased judgment debtor.

14. A perusal of the impugned order dated 01/01/2021, would show that the Executing Court has observed as follows :

“25. Therefore, from the above discussion and even from the contents of application itself it can be held that the applicants/objectors have no independent right, title and interest in the suit property and they have moved this application only on the ground that they are the legal heirs of original defendant/judgment debtor Raju Kusram and are in possession of the suit property. After perusing the entire record of present executing proceeding it reveals that similar sort of application seeking similar relief was moved by the applicants/objectors at Exh.16 on 06/08/2016 and it was not pressed by the applicants/objectors on 05/03/2020 i.e. near about after four years of filing the said application. The record further shows that even application at Exh.41 filed by the applicants/objectors is claiming similar sort of relief. Therefore, the only inference that can be drawn against applicants/objectors is that they are interested in prolonging the matter and wants to deprive the decree holder from enjoying the fruits of decree, which is in his favour and has attained finality. For these reasons, I held that the application is not maintainable and the same being devoid of any merit is liable to be rejected. Accordingly, the following order :-

Order

1. Application is rejected.
2. No order as to costs.
3. As the Hon'ble Bombay High Court, Bench at Nagpur by order dated 08/01/2020, has directed to dispose of the execution petition within six months, the decree holder is directed to take necessary steps at the earliest so that this execution petition can be disposed of within stipulated period.”

15. This Court finds that no error can be attributed to the approach adopted by the Executing Court, in the facts and circumstances of the present and for the same reason no interference is warranted in the impugned orders.

16. In view of the above, the Writ Petition is dismissed.

JUDGE

MP Deshpande