

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4134 OF 2017

SADASHIV VITHAL BONDGE AND ANOTHER
VERSUS
RAJENDRA RATILAL MUNOT AND OTHERS

Mr.S.S.Manale, Advocate for the petitioners.
Mr.A.S.Bajaj, Advocate for respondent No.1.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 4, 2022

PER COURT :

1. Heard the learned Advocate for the petitioners and learned Advocate, Mr.Bajaj appearing for respondent No.1 / Original plaintiff.
2. The petitioners, two in number, who are the original defendant Nos. 3 and 8 to the Special Civil Suit No.158/2006 filed by defendant No.1 Rajendra Munot seeking Specific Performance of an agreement and possession of the property set out in Clause No.1 of the plaint. In the said suit, defendant Nos. 3 to 8 were impleaded in the capacity of tenant in the said property with a specific pleading that they are in possession. The case pleaded by the plaintiff is to the effect that

defendant Nos. 1 and 2 had agreed to deliver the possession of the suit property, after they recover the possession of the property from the tenants.

3. In the plaint, the property is described as *Ghar Milkat No.3452* City Survey No.2659 A/2 and the house property is described as having eight rooms on the ground floor and seven rooms on the first floor, with open passage and two latrine and bathrooms. In the plaint, it was specifically pleaded that the property belonging to defendant Nos. 1 and 2 and on the ground floor, the defendant Nos. 3 to 5 are in possession of one room each, whereas defendant Nos. 6 to 8 are in possession of one room each on the first floor, whereas the remaining house property was in possession of defendant Nos. 1 and 2. The agreement to sale effected in favour of the plaintiff by defendant Nos. 1 and 2 on 15/12/2005 was sought to be executed by filing the suit seeking Specific Performance of the Agreement.

4. On 22/07/2009, the learned Civil Judge, Senior Division, Ahmednagar decreed the suit with costs. It was directed that defendant No.1 and the legal heirs of defendant No.2 shall execute the

sale deed of the suit property after accepting the amount of Rs. 3,50,000/- from the plaintiff within a period of one month and it was also directed that they shall handover the possession of the suit property, with a stipulation that if the defendants failed to execute the sale deed, the plaintiff was entitled to get it executed through the Court.

5. Being aggrieved, the judgment debtor filed First Appeal No. 2910/2009 and the First Appellate Court dismissed the appeal and directed the execution proceedings to proceed further but made a succinct observations to this effect; *"Before parting with it is to be mentioned here that the plaintiff is entitled for symbolic possession in respect of premises in possession of tenants."*

6. On the execution proceedings being filed, the present petitioners jumped as Obstructionist and moved an application vide Exh.85 seeking a relief that their possession, may be protected and the possession warrant should not be issued against them.

The impugned order is passed on the said application and the application came to be rejected on 16/03/2017 by specifically recording

that the original defendant Nos. 3 and 8 have failed to produce the cogent evidence to show that they are in possession of the some area of the suit property, being tenants and their possession need to be protected.

7. Heard the learned Advocate for the petitioner, who vehemently contest the impugned order on the ground that the possession of the present petitioners is mentioned in the suit and at the appellate stage also, the Appellate Court specifically held that the plaintiff / decree holder is entitled for symbolic possession, of the properties in possession of the tenants.

In support of the order being passed on 19/09/2014, the learned Advocate for the respondents, Mr.Bajaj has placed on record several documents, which include the document in the form of the Bailiff Report when an attempt was made to serve the present petitioners in the proceedings and the report of the Bailiff dated 19/09/2006 read to the effect that it cannot be said with certainty that they are residing on the address, on which the notices are sent. Apart from this, the learned counsel has placed on record certain additional documents alongwith his affidavit in reply filed on 28/01/2022 and this document include

the name of the petitioners in the voters' list published for the General Election of Ahmednagar Municipal Council for the year 2013. The name of the petitioner No.1 Sadashiv Vithal Bondge and his family is reflected against House No.6335. Apart from this, the Aadhar card of petitioner No.1 is placed on record and the address reflected therein is House No.6635, Kailas Nistanecha Wada, Bhist Galli, Ahmednagar. Further, as regards the petitioner No.2 is concerned, his name is shown in the draft voters' list of 2017 and the house number is described as Pipelive Road. The receipt as regards payment of tax by the petitioner No.2 Kishor Sarolkar in respect of House No.81, P.L. Road, Hudco, Savedi, Ahmednagar is also placed on record. Further the gas connection issued in favour of the said family is also on the same address.

8. The additional documents placed on record alongwith the affidavit of respondent dated 28/01/2021 and the averments contained therein are not controverted by the plaintiff by filing any affidavit. Necessarily, they deserve to be accepted. Further it is also to be noted that petitioner No.2 is allotted a house by the Pune Housing Development Authority and the documents to that effect are placed on

record.

9. In the wake of this additional documents, being read alongwith the impugned order, I do not see any illegality being committed by the learned Judge in rejecting the application filed by the applicant at Exh.85, since no evidence has been placed on record by the present petitioners to establish their possession in the suit property which has been made over to respondent No.1 by a decree which has been confirmed.

10. Apart from this, one such obstructionist, Shri Ganpat Raut who also raised the similar contention as has been raised by the learned Advocate before this Court in WP No.7475/2017 when the said petitioners approached the Court being aggrieved by orders passed below Exh.113 and 116 in RD No.240/2012. The claim sought to be advanced by them, came to be turned down by following observations made by the Single Bench of this Court :-

"18. Having heard learned counsel for parties, the executing Court, it appears, with reference to material which has been placed before it, found that there is no credible evidence available to support the case

being put up by the petitioner about him being in actual possession. The Executing Court has noted that there is no document produced on record by the petitioner like electricity bill, telephone bill or school record indicating that he had been doing some activity over disputed property. The suit had proceeded on the footing that it was defendant Nos.1 and 2 who were to take possession and hand it over to the plaintiff and further that there has been some evidence by defendant Nos. 1 and 2 about possession having been taken over from tenants. The executing court found that defendant No.5 was residing at some other place other than the suit property. The executing court has found that while it came to execution of decree in 2014, certain other tenants had been to the executing court purporting to resist the decree and their claim had been rejected. Taking stock of the situation with reference to the material on record, executing court appears to have considered that the case of petitioner being in actual possession turns out to be hollow and thus has rejected applications at Exhibits 113 and 116. While Appellate Court observed about taking over of symbolic possession of property in possession of tenant, executing court found that defendant No.5 had not been in possession of tenanted premises, as such, possession is to be taken over."

Resultantly, the petitioners were held not entitled for any relief on the ground that they had failed to adduce sufficient evidence in the support of the claim.

The present petitioners must also meet the same fate, on the same ground that they have failed to establish their claim and the executing court has rightly rejected the application filed by them seeking obstruction in execution of the decree in favour of defendant No.1.

11. With the aforesaid observation, writ petition is dismissed.

(BHARATI H. DANGRE, J.)