

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2885 OF 2016

Nazeem Mohamad Hasan Nalkhande

] .. Petitioner–Org. Def. No.4

Vs.

1. Special Land Acquisition Officer (1), Raigad, Alibaug]
2. Maharashtra State, through the Collector, Raigad, Alibaug]
3. The Chief Secretary, Maharashtra State]
4. Thama Dama Kuthe].. Org. Plaintiff
5. Maimoon Mohamed Hasan Nalkhande (*Dead*)]
6. Abdul Satta Mohamed Hasan Nalkhande]
7. Suraiya Bashir Shaikh (Dead)]
8. Usman Malmkhan Adhikari @]
- Asmat Malang Khan Adhikari (*Dead*)]
9. Meharunissa Abdul Wahab Adhikari]
10. Nasima Mushtak Adhikari]
11. Asgari Mohamad Hasan Nalkhande]

Org. Def. Nos.5 to 11

.. Respondents

Mr. Chandrakant N. Chavan for the Petitioner–Original Defendant No.4.

Mr. V.S. Nimbalkar, AGP for Respondent Nos.1 to 3.

CORAM : VALMIKI SA MENEZES, J.

DATE : 19TH DECEMBER, 2022.

P.C. :

1. Rule. Rule made returnable forthwith by consent of learned counsel for the parties.
2. This Petition challenges the order dated 10th December 2015 passed by the learned Civil Judge, Senior Division, Alibag in Execution Application No.10 of

1998 (Special Darkhast No.10/1998) in Special Civil Suit No.40/1988, whereby the executing court has rejected an application at Exhibit-19 filed by the petitioner, who is Judgment Debtor No.4 in the proceedings.

3. The Special Civil Suit No.40/1988 was filed by respondent no.4 – the original plaintiff for recovery of an amount of Rs.44,000/- from defendant nos.4 to 11, claiming that the said amount was due to the plaintiff–respondent no.4 herein towards compensation for acquisition of the suit property. The plaintiff’s claim was founded on a title of ownership to the acquired property. On that basis, the Suit was filed to recover the compensation amount. The learned Civil Judge, Senior Division, Raigad–Alibag decreed the Suit on 23rd March 1993, granting the plaintiff a money decree in the sum of Rs.44,000/-, with interest thereon @ 12% p.a. from the date of filing of the Suit till realisation of the amount.

4. In the aforesaid judgment passed in Special Civil Suit No.40/1988, the trial court has come to a categorical finding that the plaintiff was the owner of the suit property and was entitled to the compensation paid to the original defendant no.4 – the petitioner herein.

5. The defence set up by the petitioner in the said Suit was that his name was entered into the Revenue Record and he claimed a title to the suit property only on that basis.

6. In an Appeal filed by original defendant nos.4 to 11, being Civil Appeal

No.77 of 1993, before the District Court, Raigad – Alibag, the learned District Judge has concurred with the findings of the trial court on the question of title of the plaintiff and has confirmed that the plaintiff was, in fact, the owner of the suit property and entitled to the compensation and interest thereon, as decreed by the trial court.

7. In the execution proceedings for recovery of the decretal amount, the original defendant no.4 – the petitioner herein objected to the execution of the decree by filing an application primarily on the ground that the Suit itself was barred since the appellate court in its judgment had held that the property in question was an evacuee property. Apart from this contention, the defendant no.4 – the petitioner herein has also raised an issue of limitation contending that the Suit had been filed beyond the period of limitation prescribed and there was no challenge thrown to the entry in the Revenue Records. The further contention raised by the petitioner herein was that since the entry had been made in the Revenue Records and the same had never been challenged for years together by the plaintiff-respondent no.4 herein, the decree could not be sustained.

8. The executing court considered these objections and has rejected the objections of the petitioner-original defendant no.4. This order has been impugned in the present petition, invoking this court's jurisdiction under Article 227 of the Constitution of India.

9. It is argued by learned counsel for the petitioner-original defendant no.4

that the trial court has not addressed itself to the three main contentions raised in the objections to the execution application, namely, (i) that the suit property was an evacuee property and the Suit was barred by the provisions of the Administration of Evacuee Property Act, 1950; (ii) that the Suit was, in fact, barred by limitation as it was not filed within three years of the entry made in the Revenue Records; and (iii) that the entry in the Revenue Records in the name of the petitioner-original defendant no.4 has been long standing and has never been challenged by the original plaintiff-respondent no.4 herein in the Suit and therefore the Suit itself ought to have failed.

10. All the three contentions raised in the objections to the execution proceedings are matters which were dealt with and decided by the trial court, which has rejected these contentions and concluded that the plaintiff-respondent no.4 herein had proved a title to the suit property and had a right to the compensation since the Deed of Sale, by which the plaintiff acquired the suit property, was legal and proper. The findings arrived at by the trial court have been upheld by the District Court in its judgment. Since both these courts have concurrently arrived at the finding that the plaintiff-respondent no.4 herein has proved the ownership of the suit property, which was acquired, and hence proved his entitlement to the compensation, the controversy involved in the Suit had become final. Re-agitating these issues through an objection to the execution of the decree founded on these findings would amount to going behind the decree and such a course is impermissible at law.

11. On going through the impugned order, it reveals that the executing court has considered both the judgments of the trial court and the appellate court and has arrived at a conclusion that the observations made by the appellate court on the contention that the suit property was an evacuee property were only to arrive at a finding that the defence set up by original defendant no.4 – the present petitioner was false. I find no infirmity in the order dated 10th December 2015 passed by the executing court in arriving at the conclusion that the objections filed by the petitioner-original defendant no.4 were frivolous and dismissing the application.

12. There is no infirmity in the impugned order, which has arrived at just conclusions and there is no case made out for interference in the supervisory jurisdiction of this court under Article 227 of the Constitution of India. The Petition stands rejected at the threshold.

13. Rule is discharged. Petition is rejected.

[VALMIKI SA MENEZES, J.]