

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

WRIT PETITION NO. 516 OF 2022

Smt. Asha Satyanarayan Heda and others -- Petitioners

Vs.

Smt. Jankibai Durjanlal Ghatoriya and Others -- Respondents

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

Court's or Judge's orders

Mr. P.R. Agrawal with Ms. Astha Sharma, Advocate for Petitioners
Mr. D.S. Agnihotri, Advocate for Respondent Nos.1 to 3

CORAM : MANISH PITALE, J.

DATE : 26th SEPTEMBER, 2022

Heard learned counsel for the petitioners as well as the respondents.

2. By this petition, the petitioner has challenged orders passed by the Executing Court in the context of a compromise decree passed between the parties as far back as on 22/03/2016. As per the specific terms of the compromise recorded by the Court below, on the basis of which the decree was passed, the petitioners specifically conceded that they had encroached upon part of the land belonging to the respondents i.e. the decree holders and that they would remove the encroachment as also the construction made thereon at their own costs.

3. Thereafter, the respondents were required to institute execution proceeding, wherein objections were raised on behalf of the petitioners on one count or the other. As a consequence of the objections raised on behalf of the petitioners, the exercise of measurement was carried out and it is in the context of the same, that the impugned order came to be passed. The petitioners were dissatisfied with the result of the exercise of the measurement and objections were raised thereon.

4. On 03/02/2022, this Court while issuing notice specifically recorded that the petitioners were not pressing the ground that the compromise decree was obtained by misrepresentation and that they restricted the challenge in the petition to the absence of joint measurement of the entire plot. It was perhaps to satisfy the conscience of this Court that while issuing notice, interim relief was granted and the submissions on behalf of the petitioners were also recorded that if joint measurement was to be carried out, the petitioners would bear the expenses of such an exercise.

5. Thereafter, on 22/03/2022, this Court directed the petitioners to deposit an amount of Rs.50,000/-, to ensure that if ultimately the submission in the petition is found unmerited, the decree holder can be suitably compensated. It was also recorded that the Taluka Inspector of Land Records shall carry out joint measurement and submit a report before this Court.

6. Accordingly, the exercise of the joint measurement was carried out by the TILR. The petition was adjourned on various dates, including on the ground that the petitioner desired to raise objection to the report submitted by the TILR.

7. The report of the TILR was received and this Court directed that the copy of the same shall be furnished to the parties. Thereafter, the petitioners have now raised certain objections against the said reports, including an objection that the total area of the plot recorded in the said report appears to be less than 1800 sq.ft., while the decree is based on a claim that entire plot admeasures 1800 sq.ft., of which the respondents are owners of 1000 sq.f.t. and the petitioners of 800 sq.ft. It is submitted by the learned counsel appearing for the petitioners that this fact itself shows that the entire decree is rendered inexecutable.

8. The contention raised on behalf of the petitioners is vehemently opposed by the learned counsel appearing for the respondents, who submits that the despite having compromised the matter and the compromise decree being passed, as far back as 22/03/2016, till date the petitioners have been successful in delaying the matter and the respondents have not been able to enjoy the fruits of the decree.

9. In the light of what is recorded hereinabove, it is clear that the petitioners gave up the ground of challenge on their part to the effect that compromise decree was obtained by misrepresentation. The challenge was restricted to the aspect

of joint measurement of the entire plot. Pursuant to the directions given by this Court, the aforesaid exercise was indeed carried out by the TILR. The report and map on record shows that the joint measurement was carried out in the presence of the rival parties and to that extent there is no grievance. It is also evident from the report submitted by the TILR that there is indeed encroachment in the plot of the respondents for which the petitioners are responsible. The objection that the total area of that plot appears to be slightly less than 1800 sq.ft. and, therefore, the entire decree is rendered inexecutable, is another desperate attempt on the part of the petitioners to somehow delay the execution of the compromise decree. This Court is not at all impressed with the contentions raised on behalf of the petitioners.

10. It is not for nothing that the Privy Council observed that the difficulties of the plaintiff start in this legal system of our country after the decree is passed in his / her favour. Tendency of judgment debtor to keep the decree holder engaged in a long-drawn battle before the Executing Court, has almost become a mockery of our legal system. It is in this context that in a recent judgment of the Hon'ble Supreme Court in the case of **Rahul S. Shah Vs. Jinendra Kumar Gandhi** reported in (2021) 6 SCC 418, has given specific directions as to the manner in which the Executing Court is supposed to handle such situations, in order to ensure swift execution of the decree so that the faith of litigants in the legal system is restored.

11. The present proceeding is another example of the manner in which the judgment debtors are seeking to frustrate the decree holders in order to either bring them to the negotiation table or to tire them to such an extent that some of them may expire during pendency of the execution proceedings. All such attempts must be brought to an end swiftly by the Executing Court and certainly by this Court while exercising writ jurisdiction.

12. In view of the above, it is found that there is no merit in the present writ petition and accordingly, it is dismissed.

13. The Executing Court is directed to proceed further at the earliest, to ensure that the compromise decree is executed.

14. Since this Court has found that there is no merit in the present writ petition, in terms of the order dated 22/03/2022, it is directed that the amount of Rs.50,000/-, deposited in this Court is forthwith disbursed to the respondents.

15. The request made on behalf of the respondents for extension of interim order is rejected.

JUDGE