

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

WRIT PETITION NO. 994 OF 2021

Devidas Govindrao Tinghase Vs. Gangadhar Ramraoji Thakare and anr

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

Court's or Judge's orders

Mr. R.D.Dhande, Advocate for the petitioner
Mr. D.R.Bhoyar, Advocate for Respondent Nos. 1 & 2

CORAM : AVINASH G. GHAROTE, J.
DATE : 26/07/2022

1] Hd Mr. Dhande, learned counsel for the petitioner and Mr. Bhoyar, learned counsel for the respondents.

2] The petition challenges the order dated 19.1.2021 passed by the learned Executing Court whereby the application at Exh.19 filed by the decree-holder has been allowed.

3] What is material to note is that by the judgment and decree dated 18.3.2014 passed in RCS 24/2007, the judgment debtor/original defendant was directed to execute the sale deed of the suit property as described in para 3 of the same after receipt of the balance consideration and obtaining necessary permission in favour of the decree-holder. The plaint describes the suit property as under:

“The southern side portion of 2.83 H.R out of field survey no. 120, 121 and 122/1 (new Survey number 113) (new No. 115) of village Alcapur of Tahsil Deoli and District Wardha, admeasuring total area 3.88 H.R. and right Class II. It is bounded on or towards east by the field of Namdevrao Upase, on or towards west : by remaining field of Vendor, on or towards north by field of Shobhatai Gavsar, and on or towards south : by the field of Namdevrao Upase”

Thus the decree directed in sum and substance the execution of the sale deed admeasuring 2.83 H.R out of the land of Survey No. 120, 121 and 122/1 (New Survey No. 113).

4] Since in the meantime, a portion of the suit property came to be acquired by the State Government for the Lower Wardha Canal, the area of the suit property got reduced to 2.71 H.R, which was divided into three Survey No. 113/1, admeasuring 2.19 H.R, Survey No. 113/3, admeasuring 0.052 H.R. and balance Survey No. 113/2, admeasuring 1.17 H.R. (acquired).

5] In execution proceedings, the decree-holder filed an application at Exh.19-C stating that since portion of the suit property stood acquired, he was willing to get a sale deed of a lesser area of 2.19 H.R (Survey No.

113/1) than what was stated in the sale deed (2.83 H.R. of Sr.No. 113). The learned Executing Court by the impugned order has accepted the application and has directed the execution of the sale deed of the land admeasuring 2.19 H.R. in favour of decree holder.

6] Mr. Dhande, learned counsel for the petitioner submits that it was not permissible for the Executing Court to have modified the decree by going behind it and the proper course of action available for the decree-holder was to apply for modification of the decree by correcting the description of the property in the plaint and only thereafter to file the application at Exh. 19-C. He places reliance upon **Deepa Bhargava vrs. Mahesh Bhargava, (2009) 2 SCC 294** and so also **Rameshwsar Dass Gupta vrs. State of U.P (1996) 5 SCC 728**. It is therefore submitted that it was not permissible for the Executing Court to have passed the impugned order which has the effect of modifying the decree and it is therefore liable to be quashed and set aside.

7] It is axiomatic that getting a decree is far much easier than getting it executed. The instant matter is one such case. It is not in dispute that what has been directed by the judgment dated 18.3.2014, is the execution and registration of a sale deed of the area admeasuring 2.83 H.R. from and out of land of Survey No.113 in favour of the decree-holder. It is also not in

dispute that by reason of acquisition of a portion of the land of Survey No.113, the same stands divided into three parts, as mentioned in para 27 of the impugned order and also as indicated above. The decree-holder by the application at Exh.19-C is merely asking for execution of the sale deed of the subdivided part and that too for a lesser extent.

8] As indicated above, though the decree directed execution of a sale deed of 2.83 H.R from Survey No. 113, what is being sought to be got executed and registered is land admeasuring 2.19 H.R of Survey No.113/1. Since there is no dispute between the parties that the land of Survey No. 113 stood subdivided into three parts, due to the acquisition by the State Government, in my considered opinion, the learned Executing Court by permitting execution of the sale deed of the land admeasuring 2.19 H.R. of Survey No.113/1, has not modified the decree, but has merely recognized the subdivision of the land into three parts due to the acquisition of a portion thereof.

9] **Deepa Bhargava; Rameshwar Dass Gupta and Fathima Bi** (supra) relied upon by Mr. Dhande, learned counsel for the petitioner lay down a principle that the Executing Court cannot go behind the decree, which proposition cannot be disputed. However in the

instant case what has been done is that the consequent subdivision of the land of Survey No. 113 has merely been recognized by permitting the execution and registration of the sale deed of the land admeasuring 2.19 H.R of Survey No. 113/1, which is a part of the original Survey No. 113 and therefore, I do not see any modification of a decree being done by the learned Executing Court. That being the position, I do not see any merit in the petition, the same is accordingly dismissed. No costs.

JUDGE

Rvjalit