

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

WRIT PETITION NO. 3886 OF 2022

Mr. Sayyed Khwaja Ghyasuddin s/o Sirajuddin

vs.

Sarangdhar s/o Sheshrao Tayade and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. M. Balpande, Advocate for petitioner.
Mr. R. M. Sharma, Advocate for respondent No.1.

CORAM : MANISH PITALE J.

DATE : 22/07/2022

By this petition, petitioner is challenging concurrent orders passed by the two Courts below, whereby an objection raised by the petitioner to execution of a decree passed in favour of respondent No.1, has been rejected.

2. Briefly stated the backdrop in which this petition has arisen is that the respondent No.1 had filed a suit in the year 1998 against respondent No.2 for possession, on the strength of a registered Sale Deed dated 11/11/1985. The case of the respondent No.1 was that since he was residing at a place away

from the actual location of the property, he stood dispossessed by the respondent No.2.

3. Prior thereto the respondent No.2 had filed a suit for simplicitor injunction claiming that he ought not to be dispossessed in respect of the said property. The suit was dismissed in the first instance and an appeal was filed in the year 1994. There is no dispute about the fact that the suit for possession filed by the respondent No.1 was decreed in his favour and it had attained finality. It is also an admitted position that the appeal filed by respondent No.2 against dismissal of his suit for injunction was allowed in the year 2017 to the extent that he could not be dispossessed without following due process of law. It is in this backdrop that the respondent No.1 sought to execute the decree, which was granted in his favour on the basis of the aforesaid registered Sale Deed existing in his favour.

4. It is in the aforesaid execution proceeding that the petitioner for the first time raised an objection that the decree could not be executed as against him, because he was in possession of the suit property and that he was put in possession as far back as on 21/06/1990. The objection was opposed by the respondent No.1 and the Executing Court took

up the matter for consideration after evidence on behalf of the parties was recorded.

5. After taking into consideration the evidence on record, the Executing Court found that the petitioner i.e. the objector was claiming only on the basis of an agreement to sale and he had no semblance of any right or interest in the suit property, as against respondent No.1, who was having registered Sale Deed in his name and a decree of the competent Court directing possession to be handed over to him. On this basis, the objection was rejected.

6. Aggrieved by the same, the petitioner filed appeal before the District Court, which was dismissed leading to filing of the present writ petition.

7. The learned counsel for the petitioner submitted that he was put in possession as far back as on 21/06/1990 and the decree passed in favour of respondent No.1 could not be executed for the reason that he was in possession of the suit property on the basis of an agreement executed by respondent No.2 i.e. judgment debtor in his favour and that the objection raised on behalf of the petitioner was not considered in the correct perspective by the Courts below.

8. On the other hand, the learned counsel appearing for the respondent No.1 vehemently submit that the said respondent had been struggling for possession of the suit property since the year 1998, despite a registered Sale Deed executed in his favour, as far back as in the year 1985. It was submitted that the petitioner had been put up by the original judgment debtor i.e. respondent No.2, only to frustrate decree.

9. This Court has heard learned counsel for the rival parties in the backdrop of the material placed on record. A perusal of the concurrent orders passed by two Courts below shows that the sequence of events has been correctly appreciated. It is found, as a matter of fact, that the respondent No.1 has a registered Sale Deed in his favour executed as far back as in the year 1985. The decree for possession passed in his favour has attained finality. The judgment debtor i.e. respondent No.2, who only had a decree in his favour of not being dispossessed without due process of law, while pursuing the aforesaid litigation never claimed that he had handed over possession to the petitioner as far back as on 21/06/1990 and pursued his appeal on the assertion that he was in possession and did not deserve to be dispossessed without due process of law. This aspect

has been correctly appreciated by the Courts below while holding against the petitioner.

10. It is too late in the day for the petitioner to stand up and say that he has been in possession of the suit property since 21/06/1990 and that therefore, the decree passed in favour of respondent No.1 cannot be executed.

11. This Court is of the opinion that the nature of objection raised on behalf of the petitioner is another illustration of the myriad ways in which objectors in the adversarial system prevalent in our country come up with ideas to tire the decree holder to such an extent that either he comes around to settle the dispute or dies in the process, without enjoying the fruits of the decree. The petitioner appears to have been put up by the respondent No.2, only with a view to frustrate the decree, which cannot be allowed by this Court.

12. In view of the above, the writ petition is dismissed.

13. A request is made by the learned counsel appearing for the petitioner for stay of four weeks to the order passed by this Court. In the light of the

observations made herein above, this Court is not inclined to consider the said prayer. Accordingly, the prayer is rejected.

JUDGE