

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL REVISION APPLICATION NO. 7 OF 2018
WITH
CIVIL APPLICATION NO. 35 OF 2018
IN
CIVIL REVISION APPLICATION NO. 7 OF 2018**

1. Shri Ladu Puno Goankar (since deceased)

2. Smt. Rukmini Ladu Gaonkar, Wife of Ladu Puno Gaonkar (since deceased) Through their legal heir Shri Krishnanath Ladu Gaonkar, R/o Nirankal, Ponda.

... APPLICANTS

Versus

1. Shri Bombi Yeshwant Shetkar, Major, agriculturist

2. Shri Pundalik Yeshwant Shetkar, Major, motor cycle pilot, (since deceased) Through his legal heirs:

a) Smt. Janki Pundalik Shetkar, Widow of Pundalik Shetkar,

b) Shri Devanand Pundalik Shetkar, Son of late Pundalik Yeshwant shetkar, Advocate, major in age

c) Mrs. Divya Devanand Shetkar Wife of Devanand Pundalik Shetkar, Major in age,

All resident of Nirankal, Ponda-Goa

3. Shri Shankar Deu Shetkar,

4. Shri Sukdo Babi Shetkar, Major, businessman,
5. Shri Babal Ganesh Shetkar, Major, agriculturist,
6. Shri Vithoba Mahadev Shetkar, Major, businessman,
7. Shri Gajanan Datta Shetkar, Major, agriculturist,
8. Shri Kanta Rama Shetkar, Major, businessman,
9. Shri Krishna Atma Shetkar (since deceased), Represented by his legal heirs
 - a) Shri Atma Krishna Shetkar, Son of late Krishna Atma Shetkar, Major in age
 - b) Smt. Janki Atma Shetkar, Wife of Shri Atma Krishna Shetkar, Major in age, Both are resident of Kumbarwada, Nirankal, Ponda — Goa
10. Shri Yesso Saulo Shetkar, Major, agriculturist,
11. Shri Babusso Tato Shetkar Major, agriculturist,
12. Shri Vishwanath Rodi Shetkar, Major in age, agriculturist,
13. Shri Babuli Puno Shetkar, Major in age, agriculturist,
14. Shri Rama Arjun Shetkar, Since deceased through his legal heirs
 - a) Smt. Gangabai Rama Shetkar, Widow of late Rama Arjun Shetkar, Major in age,
 - b) Shri Arjun Rama Shetkar Son of late Rama Arjun Shetkar, Major in age,

c) Shri Damodar Rama Shetkar, Son of late Rama Arjun Shetkar Major in age,

d) Mrs. Sandhya Damodar Shetkar, Wife of Shri Damodar Rama Shetkar, Major in age,

All resident of Kumbarwada, Nirankal, Ponda-Goa.

15. Shri Gopi Shamba Shetkar since deceased through his legal heirs

a) Smt. Gokul Gopi Shetkar, Widow of late Gopi Shamba Shetkar, Major in age,

b) Shri Shamba Gopi Shetkar, son of late Gopi Shamba Shetkar, Major in age,

c) Smt. Dwarka Shamba Shetkar, Wife of Shri Shamba Gopi Shetkar, Major in age, housewife,

d) Shri Pandurang Gopi Shetkar Son of late Gopi Shamba Shetkar, Major in age,

e) Smt. Rukmini Pandurang Shetkar, Wife of Shri. Pandurang Gopi Shetkar, Major in age, housewife,

f) Shri. Gopi Keshav Shetkar, Major in age, service,

g) Smt. Kanti Keshav Shetkar, Major in age, house wife

h) Shri Subhash Gopi Shetkar, Major in age, unmarried, service,

i) Shri Jaiwant F. Kudtarkar, Major in age, agriculturist,

j) Smt. Shevanti J. Kudtarkar, Major in age, housewife,

k) Shri Vilas R. Shet Mayenkar, Major in age,

All resident of Kimbharwada, Nirankal, Ponda-Goa.

16. Shri Ganu Rama Shetkar, Major in age, labourer,

17. Shri Dhaku Nanu Shetkar, Major in age, labourer,

18. Shri Vithoba Babai Gaonkar, Major in age, agriculturist,

19. Shri Vishnu Shiva Shetkar, Major in age, agriculturist,

All are resident of Kumbarwada, Nirankal, Ponda-Goa.

20. Shri Datta Mhalu Gawade, Major in age, agriculturist,

Resident of Shingnwal, Nirankal, Ponda-Goa.

21. Shri. Manguesh J. Samant, Major in age, Tailor and Resident of Kirpal, Ponda Goa.

22. Shri Rajaram Puno Gaonkar, Son of Puno Bhikaro Gaonkar (since deceased)

23. Smt. Saraswati Rajaram Gaonkar (since deceased) Through their legal heirs

a) Shri. Jairam Rajaram Gaonkar, Son of late Rajaram Gaonkar, Major in age, married and his wife

b) Anandi Jairam Gaonkar, Daughter-in-law of Rajaram Gaonkar,

Both resident of Nirankal, Ponda-Goa.

c) Smt. Prema Bhiku Satarkar, Daughter of Rajaram Gaonkar, Resident of Talaulim, Ponda-Goa.

d) Shri Bhiku Satarkar Son-in-law of Rajaram Gaonkar, (since deceased)
Through his legal heirs

i) Smt. Satyabhama Prema Bhiku Satarkar, Widow of late Bhiku Atma Satarkar

ii) Shri. Balendra Bhiku Sararkar, Son of late Bhiku Satarkar,

iii) Smt. Riddhi Balendra Satarkar, Daughter-in-law of Bhiku Satarkar,

iv) Shri. Sadanand Bhiku Satarkar, Son of Bhiku Satarkar,

v) Smt. Subani Sadanand Satarkar, Daughter-in-law of Bhiku Satarkar,

vi) Shri. Jayesh Bhiku Satarkar, Son of late Bhiku Satarkar,

vii) Smt. Arti Jayesh Satarkar,

All resident of House no. 304/C,
Madlem wada, Talaulim, Ponda-Goa.

e) Smt. Gokul Shankar Gaonkar, Daughter of Rajaram Puno Gaonkar and her husband

f) Shri Shankar Hiru Gaonkar, Son of Hiru Gaonkar,

Both resident of Kalsai Dabal,
Darbandora-Goa.

g) Smt. Tulshi Suryakant Salelkar, Daughter of Rajaram Puno Gaonkar and her husband

h) Shri Suryakant M. Salelkar, Son-in-law of Rajaram Puno Gaonkar,

Both resident of Pansule, New Colony,
Morlem, Sattari-Goa.

i) Smt. Shobhan Dilip Ghadi, Daughter of Rajaram Puno Gaonkar, and her husband

j) Shri Dilip R. Ghadi, Son-in-law of Rajaram Puno Gaonkar,

Both resident of near Bhumika temple, Sal, Bicholim-Goa.

k) Smt. Jayanti Gokuldas Gaonkar, Daughter of Rajaram Puno Gaonkar, and her husband,

l) Shri Gokuldas Gaonkar, Son-in-law of Rajaram Puno Gaonkar,

Both resident of Vagon, Kirlapal, Dharbandora-Goa.

24. Smt. Janki Chandru Gaonkar, Widow of late Chandru Mukund Gaonkar, Major in age,

25. Mr. Satyawar Chandru Gaonkar, Son of Chandru Mukund Gaonkar, (since deceased) Through his legal heirs:

a) Smt. Suman Satyawar Gaonkar, Wife of Satyawar Chandru Gaonkar,

26. Mast. Mukund Chandru Gaonkar, son of Chandru Mukund Gaonkar, minor, represented by his mother Smt. Janki C. Gaonkar,

27. Mast. Ramesh Chandru Gaonkar, Son of Chandru Mukund Gaonkar, Minor, represented by his mother Smt. Janki Chandru Gaonkar,

28. Miss Jani Chandru Gaonkar, Daughter of Chandru Mukund Gaonkar Minor, represented by her mother, Smt. Janki Chandru Gaonkar,

29. Smt. Laxmi Tulshidas Gaonkar
Widow of Late Tulshidas Mukund
Gaonkar, Housewife

30. Mast. Morto Tulshidas Gaonkar, Son
of Shri, Tulshidas Mukund Gaonkar,
Minor, represented by his mother, Smt.
Laxmi Gaonkar

31. Mast. Sudam Tulshidas Gaonkar, son
of Shri Tulshidas Mukund Gaonkar,
minor, represented by his mother, Smt.
Laxmi Gaonkar,

All are resident of Nirankal, Ponda Goa.

32. Smt. Saroja Krishnanath Gaonkar

33. Shri Anant Ladu Gaonkar

34. Smt. Shali Anant Goankar Legal
heirs of Shri Ladu Puno Goankar
(deceased) Smt. Rukmini Ladu Gaonkar
(deceased),

All major in age, resident of Gal,
Nirankal, Ponda-Goa.

35. Mrs Jayashri Lavu Gaonkar,

36. Shri Lavu Jagannath Gaonkar , Legal
heirs of Shri Ladu Puno Goankar
(deceased), Smt. Rukmini Ladu Gaonkar
(deceased),

Both major in age, resident of Conxem,
Nirankal, Ponda, Goa.

... RESPONDENTS

Mr. Joaquim Godinho with Mr. Manoj Jalmi, Advocates for
the Applicants.

Mr. Deepak Gaonkar with Mr. Nehal Govekar and Mr.
Amey Salgaonkar, Advocates for Respondent Nos. 1, 2(a),
2(b) and 2(c).

CORAM: B.P. DESHPANDE, J.

DATED: 27th JULY 2023

ORAL JUDGMENT:

1. Heard learned Counsel Mr. Godinho for the Applicants and Mr. Gaonkar, learned Counsel appearing for Respondent Nos. 1, 2(a), 2(b) and 2(c).
2. The rest of the Respondents, though served, failed to appear and contest the present Revision. It is submitted that the parties whom Mr. Gaonkar represents are the only contesting parties in the present matter.
3. The Applicants/Decree Holders filed execution proceedings No. 3 of 2013 praying that possession of the suit property be handed over to them as per the decree which became final. Some of the Judgment Debtors i.e. Judgment Debtor Nos. 1, 2(a), 2(b) and 2(c) filed objections to the execution of the decree on the ground that the Decree Holders do not have any locus to execute the decree due to subsequent events.

4. The learned Executing Court by considering the said objections, passed the impugned order dated 04.10.2017, thereby directing to conduct an inquiry. The operative part of the order of the Trial Court read thus:

“An inquiry shall be conducted to determine the following points:

- a) Whether the plots of land sold by the Decree Holders under the sale deeds dated 06/02/2009, 17/02/2009 and 16/02/2009 form a part of the property which is the subject matter of the Decree dated 27/06/2003 and delineated in Red on the plan annexed to the Decree ?*
- b) If point (a) is answered in the affirmative, whether the Decree Holders have locus to maintain the present execution application ?*
- c) If point (a) is answered in the affirmative, whether the present application has become infructuous against the persons arrayed as Judgment Debtors in these proceedings ?*
- d) Whether the Judgment Debtors are still in possession of any portion of the property delineated in Red on the plan annexed to the Decree ?”*

5. Learned Counsel Mr. Godinho appearing for the Applicants would submit that the Judgment Debtors do not have any right to challenge the execution since they are in illegal possession of the suit property and accordingly, they are only required to hand over the possession to the Decree Holders. He would submit that by directing an inquiry, the learned Trial Court is unnecessarily

delaying the matter and by entertaining such objections, the Decree Holders are unable to enjoy the fruits of the decree. He submitted that the impugned order is perverse as the Judgment Debtors have no locus to challenge such decree. He submitted that the impugned order is illegal and beyond jurisdiction as by doing so and by ordering an inquiry, the Executing Court is trying to go behind the decree in order to re-open the issues that were decided between the parties by the judgment and decree.

6. Mr. Godinho relied on the following judgments:

(i) *Lekh Raj (D) Thr. L.Rs & Others Vs. Ranjit Singh & Others*, 2018 ALL SCR 188;

(ii) *Satyawati Vs. Rajinder Singh & Another*, (2013) 9 SCC 491 and

(iii) *Savitribai A. Salvi Vs. Suman Navgire & Others*, 2009(5) Mh.L.J. 387.

7. Mr. Gaonkar appearing for Respondent Nos. 1, 2(a), 2(b) and 2(c) would submit that the impugned order is just and there is no illegality or any propriety in it, so as to interfere with it in the revisional jurisdiction. He would submit that subsequent to the decree, the Decree Holders sold the area of 83,852 square metres which included the land for which the decree was passed for grant of possession. He submits that in view of the admitted

facts, the Decree Holders are not having any locus to execute the decree since they lost the title over the said property. He submits that in fact, the purchasers ought to have filed execution by stepping into the shoes of the Decree Holders as they purchased the said property.

8. The rival contentions fall for determination.

9. Regular Civil Suit No. 136 of 2000 was filed for recovery of possession. By judgment and decree dated 27.06.2003, the Civil Court decreed the suit and directed Defendant Nos. 1, 2, 3 and 25 to hand over the possession of the property marked in red in the plan at Exhibit-PW.1/D.1, within 90 days from the date of the decree in favour of the Defendants. The said plan forms part and parcel of the decree.

10. Since the Judgment Debtors failed to hand over possession of the suit property, the Decree Holders preferred Execution Application No. 3 of 2013. In paragraph 3(j), the mode of assistance of the Court was sought, by directing the Judgement Debtor Nos. 1, 2, 3 and 21 to hand over the possession of the suit property marked in red colour in the plan annexed to the decree

to the Decree Holders. In the alternative, it is prayed that if the Decree Holders fail to hand over the possession, the Court should direct the Bailiff to take possession of the suit property and if necessary, Police protection be granted.

11. The Judgment Debtor Nos. 1, 2(a), 2(b) and 2(c) appeared and contested the execution proceedings by filing their reply which is dated 13.07.2015. In the said reply, apart from challenging the decree, a specific plea has been raised that the Decree Holders have no locus to file the execution of the said decree in view of the subsequent development i.e. execution of sale deeds by Decree Holders in favour of the third parties thereby selling the entire suit property to the third parties. Specific averments are found in paragraphs 11 and 12 of the reply wherein the Judgment Debtors challenged the locus of the Decree Holders to maintain such execution and to seek possession since they lost the title or that they passed on the title to third parties by way of sale deeds.

12. By the impugned order, the learned Executing Court observed that the execution is by directing the Judgment Debtors to hand over possession of the suit property to the Decree

Holders. However, since, it is alleged by the Judgment Debtors that the Decree Holders themselves are not the owners and therefore, have no locus to file execution, needs to be inquired into. The learned Executing Court framed four questions/points in its final order as quoted above, which describes the objections raised by the Judgment Debtors and the necessity to conduct an inquiry. Though it is a settled proposition of law that while executing a decree, the Court cannot go beyond the decree, in the present matter, due to subsequent development [which are admitted by the Decree Holders] that they sold part of the said property to third parties, the locus of Decree Holders to claim possession of the entire suit property needs to be inquired into. Such inquiry should be only restricted to the aspect of the execution of the decree in favour of the Decree Holders qua the fact that some part or the entire property is sold out in favour of third parties. The Judgment Debtors in their reply specifically referred to three sale deeds and copies of it are also placed on record. The Decree Holders did not dispute the execution of such sale deeds. Thus, it shows that the title which the Decree Holders were holding at the time of passing of this decree is now passed on to third parties and therefore, there is a need to decide whether the Decree Holders have locus to claim possession.

13. Learned Counsel Mr. Godinho would submit that though they sold some portion of the suit property, they have to obtain possession from the Judgment Debtors and then pass it on to the respective purchasers. Such a procedure which Mr. Godinho wants the Applicants to do is clearly unheard of. In normal circumstances, when the immovable property is sold, even the possession is also handed over. This aspect needs to be inquired into by the Executing Court for which points are framed in the operative part of the order.

14. In the case of **Lekh Raj** (supra), the Hon'ble Apex Court was dealing with the aspect of the objection to the decree on the ground that it became nullity after the amendment in the Punjab Custom Act wherein the customary rights were taken away. In that context, the Hon'ble Apex Court observed that such an aspect cannot be gone into in an execution proceedings since the rights of the parties have been crystallized and subsequent change in law would not take away such rights. The matter in hand clearly goes to show that the Decree Holders voluntarily passed on the title to the third parties by executing the sale deeds and therefore, the question of whether they are entitled to execute such a decree, of which they are not the title holders, needs to be inquired into. If

such exercise is not carried out and the decree is executed, the rights of the third parties created by the Decree Holders by executing the sale deeds would prejudicially be affected.

15. In the case of **Savitribai A. Salvi** (supra), the Hon'ble Apex Court discussed the limited and narrow scope of the Executing Court which includes the powers of the Executing Court, which has to go by the decree itself. In that case, after becoming unsuccessful in challenging the order of eviction, the Judgment Debtors raised an objection in execution claiming that the decree itself is nullity and cannot be enforced. The matter in hand is totally in a different context. The Judgment Debtors are not claiming that the decree is a nullity. However, they are only challenging the locus of the Decree Holders on the ground that they subsequently passed on the title of the suit property in favour of third parties and therefore, such third parties step into the shoes of the Decree Holders who could have filed the execution.

16. In the case of **Satyawati** (supra), the Hon'ble Apex Court held that the Executing Court should not observe any factors or facts or reports other than those taken into account by the Court passing judgment and decree and which formed part of the record

itself. In that matter, the Executing Court observed that the decree was not executed because of certain contradictory reports. In that context, the Hon'ble Apex Court observed that such reports which were not part and parcel of the proceedings in the suit cannot be taken into account to keep the Decree Holders away from their rights which were crystallized in his favour by way of judgment and decree. This decision of the Hon'ble Apex Court will not help the Applicants for the simple reason that the Executing Court has directed to conduct an inquiry to determine the points framed in the operative part of its order. The execution is still pending. The inquiry is limited to the fact as to whether the Decree Holders have locus to maintain the execution and seek possession on the ground that they sold the suit property to third parties.

17. To my mind, the approach of the learned Trial Court is neither illegal nor arbitrary in any manner. The objections raised on behalf of the Judgment Debtors are found to be genuine and based on documents which need to be inquired into. Such objections cannot be dismissed only on the basis of arguments. The approach of the learned Trial Court is, therefore, justified warranting no interference in the revisional jurisdiction.

18. The Revision therefore fails and stands dismissed. Parties shall bear their own costs.

19. Civil Application, if any, stands disposed of accordingly.

B.P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH



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