

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.296 OF 2023
AND
CIVIL APPLICATION NO.55 OF 2023**

Mrs Ida Fernandes e Almeida
(since deceased)
through her legal heirs/representatives:
1(a) Ms Lavina Almeida,
1(b) Miss Lianka Almeida,
Both resident of H.No.135,
Near St. Lawrence Chapel,
Arossim, Cansaulim, Goa.

1(c) Mr Lakhit Lucas Almeida
Resident of 6-C/104,
Kannamwar Nagar-2,
Near Janta Market,
Tagore Nagar, Kurla,
Vikhroli East, Mumbai – 400083.

....Petitioners

Versus

Mrs Caroline A. Fernandes,
W/o. Late Apolinario Fernandes,
aged about 76 years,
r/o. Jani Compound,
Chindhi Gowdown,
Gathala Village, Chembur,
Mumbai – 71.

....Respondent

**Mr V. Braganza with Mr Richard Almeida, Advocates for the
Petitioners.**

Mr Sahil Sardesai, Advocate for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 23rd JUNE 2023

ORAL ORDER :

1. Heard Mr V. Braganza with Mr Richard Almeida for the petitioners and Mr Sahil Sardesai for the respondent.

2. This petition takes exception to the Executing Court's order dated 15.03.2022 rejecting the petitioners' plea that the decree in Regular Civil Suit No.22/2014/D was a nullity and, therefore, the execution should be dropped.

3. Mr Braganza, the learned Counsel for the petitioners, submitted that the relationship between the defendants, i.e. the Judgment Debtors and the petitioners, was that of a Bhatkar and Mundkar. He presents that accordingly, given the provisions of Section 31(2) and 32 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, the Civil Court had no jurisdiction to entertain the suit and the decree made by the Civil Court is a nullity. He submitted that the plea of nullity could be set up at any stage, including at the stage of execution.

4. Mr Braganza further pointed out that in the year 2009, the purchase proceedings were disposed of by the Mamlatdar. In terms of the order made, one portion of the mundkarial property was permitted to be purchased by the Decree Holder and the other by the Judgment Debtors. He submitted, however, that the Decree Holder

has purchased the entire mundkarial property based upon a registered Sale Deed. For this reason, also Mr Braganza presents that the relationship of Bhatkar -Mundkar subsists, and the Civil Court could not have entertained such a suit. He points out that even the 2009 purchase order has been questioned by the Decree Holder by filing independent proceedings, which are pending.

5. Mr Sardesai points out that the Judgment Debtors raised virtually similar objections when they applied to refer this issue to the Mamlatdar. The application at Exhibit D-14 made by the Judgment Debtors was dismissed after detailed consideration by the Executing Court's order dated 02.12.2021. Mr Sardesai points out that significantly this order was never challenged by the petitioners, and the attempt is to raise the same points to delay the execution proceedings further.

6. Mr Sardesai points out that the suit and the First Appeal were dismissed, and the Second Appeal instituted by the Judgment Debtors was unconditionally withdrawn. He submits that no issue of jurisdiction arises because the Judgment Debtors were claiming rights based upon the alleged purchase of 2009. In any case, Mr Sardesai points out that without purchase, even a Mundkar has no right to demolish the existing structure and reconstruct a new structure.

7. Mr Sardesai pointed out that even a Mundkar or an alleged Mundkar has no right to put up a new construction without obtaining permission from the concerned authorities. In this case, the Judgment Debtors obtained no permissions, and the Civil Court was therefore justified in ordering the demolitions. Mr Sardesai relied upon *Satyawati V/s. Rajinder Singh and Anr.*¹, where the Hon'ble Supreme Court deprecated repeated attempts to delay execution proceedings.

8. The rival contentions now fall for my determinations.

9. In this case, the record bears out that the Judgment Debtors raised a vague objection based upon lack of jurisdiction in the Civil Court in the written statement. However, the objection was entirely frivolous because even the Judgment Debtors claimed to be owners through the 2009 purchase. This is why no steps were taken to get an issue framed or an adjudication on this issue. No arguments on the issue of the alleged lack of jurisdiction of the Civil Court appear to have been raised. No such arguments appear to have been seriously pressed even in the appeal. In any case, the appeal Court considered and rejected this ground. A Second Appeal was filed and the same was unconditionally withdrawn.

¹ (2013) 9 SCC 491

10. This issue was raised before the Executing Court by filing an application at Exhibit D-14 and seeking a reference to the Mamlatdar based on the premise that the Mamlatdar has exclusive jurisdiction to deal with disputes between a Bhatkar and a Mundkar. Upon detailed consideration of arguments virtually identical to what has now been pressed before this Court, the Executing Court dismissed the application at Exhibit D-14. Significantly, this order was never questioned by the Judgment Debtors. Instead, the Judgment Debtors permitted the execution to proceed, invited an order on the issue of nullity and challenged the same by instituting the present petition. This approach of raising the same objection at different stages and by making cosmetic changes indicates the clear attempt of the Petitioners to delay the execution and deny the Decreeholders the fruits of their decree.

11. Since the Judgment Debtors claim to have become owners by the 2009 proceedings, the dispute between the parties can be said to be between two owners. The Civil Court was competent to entertain and decide upon such a dispute. Similarly, it is not as if Bhatkar can, under no circumstances, approach the Civil Court. Where a Mundkar or an alleged Mundkar, even without purchasing the mundkarial property, seeks to demolish the mundkarial house or any part thereof or reconstruct the same, the Bhatkar is not barred from approaching the Civil Court and obtaining appropriate relief. Similarly, where the construction is without permission from any authorities, the

jurisdiction of the Civil Court cannot be said to be barred, or the decree cannot be said to be a nullity.

12. The Petitioner's defences were not quite clear. At times, the arguments contradicted themselves. The defences, at best, involve mixed questions of fact and law. No serious steps were taken to press them. No evidence was led concerning them. After the appeal court rejected them, a second appeal was instituted but inexplicably withdrawn. Even in execution, the same objection is raised at two stages without questioning the rejection at the earlier stage. The idea is to prolong the execution proceedings indefinitely.

13. There is no dispute in the present case that the construction put up by the Judgment Debtors was sans permission from any of the authorities. A belated plea made across the bar with liberty should be granted to seek regularisation is entirely misconceived. Construction that openly defies the planning and Panchayat laws cannot be regularized. Moreover, there is no evidence of the building being within permissible limits in this case. This is nothing but a tactic of further delaying the execution proceedings and depriving the Decree Holder of the hard-earned fruits of the decree. No case is made to declare the decree nullity or otherwise stop the execution.

14. In *Satyawati* (supra), the Hon'ble Supreme Court made the following observations in paragraphs 12 to 16:

“12. It is really agonizing to learn that the appellant-decree holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant-plaintiff had finally succeeded in January 1996. As stated hereinabove, the Privy Council in the case of The General Manager of the Raj Durbhnga under the Court of Wards vs. Maharajah Coomar Ramaput Sing had observed that the difficulties of a litigant in India begin when he has obtained a Decree. Even in 1925, while quoting the aforestated judgment of the Privy Council in the case of Kuer Jang Bahadur vs. Bank of Upper India Ltd., Lucknow [AIR 1925 Oudh 448], the Court was constrained to observe that "Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights."

13. In spite of the aforestated observation made in 1925, this Court was again constrained to observe in Babu Lal vs. M/s. Hazari Lal Kishori Lal & Ors. [(1982) 1 SCC 525] in para 29 that “Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections.....”

14. This Court, again in the case of Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. & Anr. [(1999) 2 SCC 325] was constrained to observe in para 4 of the said judgment that “.....it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant

since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes long time.....”

15. Once again in the case of Shub Karan Bubna alias Shub Karan Prasad Bubna vs. Sita Saran Bubna and Ors. [(2009) 9 SCC 689] at para 27 this Court observed as under :

“In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.”

16. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed,

the entire effort of successful litigant would be in vain.”

15. The above observations apply to the case of the Judgment Debtors, who have been stalling the execution proceedings by raising repeated contradictory pleas at different stages. Accordingly, this petition has no merit, and the same is dismissed. The interim order granted earlier is hereby vacated. There shall be no order for costs.

16. Misc. Civil Applications do not survive, and the same are also dismissed.

M. S. SONAK, J.

NITI K
HALDANKAR

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