

Chaitali Ekke

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1999 OF 2010

Smt. Yamunabai Gulab Lambkane
Aged 73 years, Occupation Nil,
R/o Hingni Berdi, Taluka Daund,
District Pune.

Petitioner
...(Original D.H.)

Versus

- 1 Shri. Sumedh Madhukar Kamble
Aged 28 years, Occupation Service,
R/o Bhise Chambers, Aundh Road,
Pune – 411 003.
- 2 Sou. Shalanbai Mahadeo Bagal,
Aged 50, Occupation Agriculture
- 3 Kamladevi Ashok Bagal
Aged 43 years, Occupation Agriculture
- 4 Vaishali Balasaheb Bagal
Aged 38 years, Occ. Agriculture
- 5 Shivaji Bhanudas Lambkane
Aged 53 years, Occ. Service,
All R/o Hingni Berdi,
Taluka Daund, District Pune.

...Respondents

....

Mr. Vinayak Kumbhar i/b Mr. N.V. Bandiwadekar, Advocate for
Petitioner.

Mr. Akkshay H. Kumar i/b Manjiri Paransis, Advocate for Respondent.

....

CORAM : RAJESH S PATIL, J.

DATED : 27th JANUARY 2023

ORAL JUDGMENT:

1 The present Writ Petition is filed by decree holder
challenging the order below Exhibit 87, dated 19.11.2009 and order

below Exhibit 90 also dated 19.11.2009 passed in Regular Darkhast No. 74 of 2001, by Civil Judge Junior Division, Daund.

2 The Petitioner in the year 1986 had filed Regular Civil Suit No. 22 of 1986 against the present Respondent Nos. 2 to 5, for possession of suit land bearing Gat No. 199 admeasuring 2 H 36 Rs, situated at Village Kalewadi, Taluka-Daund, District-Pune. The said suit was however dismissed by the Trial Court on 14.11.1994. The Petitioner had thereafter filed appeal being RCA No. 11 of 1995 against the said judgment and decree of the Trial Court. On 28.09.1999 the RCA No. 11 of 1995 was allowed in favour of the Petitioner and the suit in turn was decreed.

3 To the said judgment and decree passed by the District Court there was no challenge by the Respondents. As the Respondent had failed to comply with the direction given by the Appellate Court. Hence, on 27.08.2001 the Petitioner filed Regular Darkhast No. 74 of 2001, for execution of the judgment and decree passed by the Appellate Court.

4 In the execution Application filed by the Petitioner on 24.01.2002 warrant of possession was issued. However, to the said possession warrant, the Respondent No.1 obstructed the execution of the decree on the grounds that he had purchased the suit property way back

on 22.01.1988. To the said obstruction the Petitioner filed Application proceedings on 28.03.2002.

5 The said Application of Respondent No.1 was rejected on 16.10.2002. Respondent No.1 hence filed an Appeal against the said rejection. The said Appeal was also rejected. The Second Appeal filed against the said order was also rejected and thereafter matter was not carried forward by Respondent No.1. Hence the Petitioner argued that Respondent No.1 thereafter had no locus to file any application.

6 The Petitioner has thereafter received possession through Bailiff on 28.03.2005, pursuant to a decree dated 28.09.1999.

7 Respondent No.1 thereafter filed application Exhibit 87 (Exhibit-I), praying therein that it be declared that possession report be set aside and inquiry to that effect be carried out. The said application was filed on 13.04.2005.

8 The Petitioner thereafter filed an application Exhibit 90 stating therein they have received the possession, the decree marked fully satisfied hence, the execution proceedings should be disposed.

9 The Civil Judge Junior Division, Daund thereafter passed two different orders on 19.11.2009 and one such order was passed on Application Exhibit 90. The said order read as under :

ORDER BELOW EXH.90 IN R.D.NO. 74/2001

Considering the application and say on it, before going to pass any order on this application I am of the view that this application arose after the allegations made as per Exh.87. Therefore, I think Exh.87 required to be decided first. Therefore this application hereby stayed till the order pass on Exh.87.

10 The second order was passed on Application Exhibit 87 which reads as under :

ORDER BELOW EXH.87 IN R.D.NO. 74/2001

J.D. is hereby directed to call the panch witnesses namely Bapu Gulab Napure, Laxman Dharma Sonawane, Chandrakant Dinkar Dhumal, Shivaji Pandharinath Gade in support of Exh.85/1 to 85/8. On the other hand D.H. and concerned bailiff are at liberty to cross examine these witnesses.

11 The Original Decree Holder has by this Writ Petition challenged both these orders. The crucks of the arguments of the Petitioner's Advocate was that Respondent No.1 / subsequent purchaser had no locus to file the application (Exhibit 87), challenging possession Report. The Application (Exhibit 90), by which the Petitioner had requested the trial court to dispose off the execution application filed by the Petitioner should be allowed. The Petitioner's Advocate further argued that obstructionist whose application was rejected by the trial

court and the District Court so also by High Court in Second Appeal would have no locus to file a fresh application. So also the possession of suit premises has been received by the Petitioner, through Bailiff on 28.03.2005, therefore, decree stands fully satisfied, hence nothing survives in the Execution Application, and the same requires to be disposed off.

12 I am of the view that Respondent No.1 had no locus to file a fresh application in the execution proceedings once the obstructionist proceeding were disposed of and the said orders had attained finality.

13 The Obstructionist Respondent No.1 has admittedly purchased the suit property during the pendency of the proceedings. The Respondent No.1 has admittedly not issued any public notice before purchasing the suit property. Hence, what was expected from a purchaser by way of precaution before purchasing any property, has not been done by the Respondent No.1 / Obstructionist. Therefore, in turn the Obstructionist / Respondent No.1 can't be called as a bonafide purchaser without notice. So also the fact that possession of the suit property has been already handed over to the Petitioner by the Bailiff way back on 28.03.2005, will also have weightage to the present proceedings. And if the Decree Holder / Petitioner comes to the executing court and seeks a direction for withdrawing his own execution application, as the decree is

fully satisfied, the Court can't refuse this kind of a relief.

14 In that view of the matter, the present Writ Petition deserves to be allowed in terms of prayer clauses (a), (b) and (c).

15 No order as to costs.

(RAJESH S. PATIL, J.)