

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5576 OF 2023**

Ramakant alias Ramesh Baburao ...Petitioner
Kakdekar

V/s.

Mrs. Vranda G Pai, Proprietor of ...Respondents
M/s Srinivas Builders & Ors.

**WITH
WRIT PETITION NO.5577 OF 2023**

Rajaram Baburao Kardekar & Anr. ...Petitioners

V/s.

Mrs. Vranda G Pai, Proprietor of ...Respondents
M/s Srinivas Builders & Ors.

Mr. Sachin H. Kankal for Petitioners in both
Petitions.

Mr. Somnath B. Amin for Respondent No.1 in both
Petitions.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 18th APRIL 2023**

P.C.:

1. It is generally believed that in India, the difficulty of the litigant starts after getting the decree. The Supreme Court in the case of **Griesheim GMBH Vs. Goyal MG Gases Pvt. Ltd.**¹.

observed as follows:-

¹ (2022) 11 SCC 549

"2. **It is an old saying that the difficulties of the litigant in India begin when he has obtained a decree. The evil was noticed as far back in 1872 by the Privy Council** in relation to the difficulties faced by the decree-holder in execution of the decree [*General Manager, Raj Durbhunga v. Coomar Ramaput Sing*, 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605 : 20 ER 912] , Moo IO p. 612. **After more than a century, there has been no improvement and still the decree-holder faces the same problem what was being faced in the past.** A litigant coming to court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. **What he primarily wants from the court of justice is the relief** and if it is a money decree, he wants that money what he is entitled for in terms of the decree, must be satisfied by the judgment debtor at the earliest possible without fail keeping in view the reasonable restrictions/rights which are available to the judgment debtor under the provisions of the statute or the code, as the case may be.

(Emphasis added)

The above observations of the Supreme Court are squarely applicable to the present case.

2. In the present case, the Respondent No. 1 filed T.E. and R. Suit No. 53/63 of 2003 against the Petitioners for eviction. In the said suit *exparte* decree was passed by the judgment and decree dated 15th January 2005. Thereafter, the Defendants filed an application for setting aside *exparte* decree under Order IX, Rule 13 of Code of Civil Procedure, 1908 and the said application was rejected. The said order has been confirmed upto the Supreme Court.

3. Thereafter the Respondent No.1 i.e. the decree-holder filed Execution Application No.12 of 2009. Obstructionist proceedings

were taken out by one Rajani Shantaram Panera being Miscellaneous Application No.13 of 2009. It is significant to note that said Rajani Shantaram Panera is the daughter of Baburao Kakdekar. The Petitioners in above Writ Petitions i.e. original Defendant Nos. 1 to 3 are sons of said Baburao. It was the contention of said Rajani Panera that the said decree was obtained by the present Petitioners and Respondent No.1 in collusion with each other. The said application was rejected by order dated 13th December 2012 by *inter alia* holding that the said application was filed at the instance of her brothers i.e. Defendant Nos. 1 to 3 i.e. the present Petitioners.

4. The judgment-debtors i.e. present Petitioners also filed separate application bearing Miscellaneous Application No.319 of 2009 objecting to the execution to the decree raising contention regarding identity of the suit property. The said Miscellaneous Application No. 319 of 2009 was dismissed by order dated 28th September 2012. The Revision Application No. 17 of 2013 filed challenging said order came to be dismissed by order dated 16th February 2013. The said order was challenged by the judgment-debtors by filing Writ Petition No. 1676 of 2013 and this Court by order dated 13th March 2013 rejected the said Writ Petition. In the said order dated 13th March 2013, this Court observed that neither before the Trial Court nor before the Appellate Court and

the High Court any objection regarding identity of the suit property was raised by the Defendants. In the said order, it has been observed that the said application was nothing but an attempt on the part of the Defendants to protract the execution of decree confirmed upto the Supreme Court. It has been further observed that when a decree reached finality, a party should not be denied fruits thereof by entertaining frivolous application. It is further significant to note that the said order dated 13th March 2013 was challenged by the judgment-debtors by filing Special Leave Petition No. 12025 of 2013 and the said Special Leave Petition was dismissed by the Supreme Court by order dated 19th March 2013 by observing that no legal and valid ground is raised for interference.

5. It appears that the application for issuing warrant of possession was thereafter filed in the said Execution Application No. 12 of 2009 and possession warrant was accordingly issued on 9th January 2013. Thereafter the said possession warrant was partly executed on 8th April 2013 and possession of suit premises from the Defendants together with structure of three rooms is recovered. Obstruction to the remaining part of suit premises was raised by third person against whom obstructionist proceedings bearing Obstruction Notice No. 11 of 2013 is filed. Thereafter the Defendants i.e. judgment-debtors filed an

application bearing Exhibit 40 under Section 47 of the Code of Civil Procedure, 1908. The said application, Exhibit 40 was filed by Defendant Nos. 1 and 2. The Defendant No. 3 filed Marji Application No. 186 of 2013. In both the applications, the contention of the Petitioners is that they are the owners of the suit property and the Plaintiffs i.e. decree-holders are not the owners of the suit property. The said contention is raised on the basis of revenue entry. The first revenue entry on the basis of which the said contention is raised is relevant and is dated 30th May 1968. The said entry reads as under:

"Seen the site the Khots representation not present on further date Shri. Shringarpure manager of the Khot appeared and stated that the **land in the R.R. Stand in the name of the trust (Khot)**. The structure are built by Shri. Kakdekar who is his tenant and pay the monthly rent Rs.5/-. He showed the khata S.No. 242 showing that **the land admeasuring 133 sq. yards is rented out to Shri. Kakdekar** no recovery of Rent is pointed at since 1961 and for which the Khot intends to take legal steps. Seen the receipt No. 9301/17-9-1962 of Rs.25/- denoting payment of rent up to Nov. 1960. No appropriation under is produced by Khot Shri. Shringarpure manager at Malad has stated that necessary Enquiry is pending before the Tahsildar, Borivali. He shows with the help of khata that Shri. Kakdekar is tenant for the last 30 years.

Shri. Rajaram Baburao Kakdekar who is the son of the tenant is present and admits the tenancy. He has however no knowledge about the duration of the tenancy. In the absence any reappropriation order Khot title on the land can no the accepted as it requires to be decided under Section 4 of the Salsette Estate L.R. Exemption Abolition Act, 1951.

So pending decision of the enquiry under the Khot Abolition Act. I put the name of Khot in Other rights. Holder Shri. Baburao Ganpat Kakdekar pending decision enquiry before Tahsildar, Borivali. The Super structure belongs to Shri. Baburao Ganpat Kakdekar.

Other right -F.E. Dinshaw Trustees National and Grindlays Bank Ltd., Malad

Sd/xxx /30.5.68

Same as for Challan No. 167

Sd/-xxx/30.5.68"

(Emphasis added)

6. On the basis of said revenue entry, in the Property Card, name of Baburao Ganpat Kakodkar is entered as holder in 1968 and in other remarks column, name of the trust is entered. From the said Trust, the present Respondent No.1 has purchased the property by Deed of Conveyance dated 2nd December 1986. On the basis of above revenue entries, now it is the contention of the Petitioners that they are the owners of the suit property and the Respondent No.1-Plaintiff is not the owner as said Trust is not the owner of the suit property and therefore the Plaintiff cannot get any right, title and interest in the suit property as the vendor of the Plaintiff is not having any right, title and interest in the suit property.

7. Both the learned executing Court as well as the learned Appellate Court have recorded the finding that the said revenue entry on the basis of which the Petitioners are claiming

ownership is not in fact the revenue entry and it is an inspection report and the same cannot be treated as mutation entry. Both the Courts have further recorded that even if the said inspection report is taken into consideration, it is also clear that the Defendants are the tenants of the suit property. Both the Courts have concurrently held that on the basis of such entries, title is not conferred on the Petitioners.

8. The Courts have also taken into consideration the aspect that the Defendants by one way or other are trying to delay the execution of the decree confirmed upto the Supreme Court. It is further significant to note that earlier the Defendants have raised contention regarding identity of the property and the said contention was raised in 2009. The said contention was rejected by the learned executing Court, by the High Court and also by the Supreme Court. Thereafter, warrant has been executed partly and thereafter again this new application is filed.

9. The learned executing Court as well as the learned Appellate Court by giving cogent reasons have rejected the said objection. Mr. Kankal, learned Counsel appearing for the Petitioners has not pointed out any illegality or perversity in the impugned orders. The Petitioner has raised contention regarding ownership only on the basis of above entries which the learned executing Court and the learned Appellate Court have rightly

rejected by holding that the same is merely inspection report and not the revenue entry. In any case, it is settled legal position that revenue entries do not confer any title. Therefore, there is no substance in the present Writ Petitions.

10. It is clear that the Petitioners are trying to protract the execution of decree of eviction dated 15th January 2005. Therefore, both the Writ Petitions are dismissed with costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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