

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

CIVIL WRIT PETITION NO. 7673 OF 2022

Prakash Bhaskar Kulkarni
Through Assignee purchaser of suit property
Kantilal Annaso More ..Petitioner.

Versus

Apparao Janardhan Vyavahare
since deceased Through Legal Heirs ..Respondents

Mr. Machhindra A. Patil for Petitioner.

**CORAM : SARANG V. KOTWAL, J.
DATE : 20 MARCH 2023**

PC :

1. The Petitioner has challenged the order dated 15/01/2022 passed by Jt. C.J.J.D., Pandharpur below Exh.1 read with Exhibit 40 in R.D.No.38 of 2014. The Petitioner claims to be the Assignee of the original Plaintiff who had filed R.C.S.No.409 of 1991 before the 3rd Jt. C.J.J.D. Pandharpur. The original Plaintiff was Prakash Bhaskar Kulkarni. Kantilal Annaso More claims to be his Assignee and purchaser of the suit property. The R.C.S.No.409

of 1991 was decreed on 31/03/2000. The order passed in the suit reads thus:

- “1. Suit is decreed with cost.
2. Defendants No.1 to 10 are hereby directed to hand over possession of encroached area which is from western side of gate no.180 from east-west side at about 78Are land as per the map produced at Exh.46 to the plaintiff within three months from the date of this order.
3. Defendant no.1 to 10 are hereby directed that they should not obstruct the peaceful possession of the plaintiff over suit property themselves or through any agent.
4. Decree be drawn up accordingly.”

2. The original Plaintiff had filed Darkhast No.63 of 2006. That application was filed on 13/11/2006. On 29/08/2011, the executing Court had issued possession warrant. Subsequently, on 04/03/2013, the Court observed that the Decree Holder and his counsel were absent. The Decree Holder had failed to take steps in spite of ample opportunities. It showed that the Decree Holder was not interested in the matter and hence, the Execution Petition was dismissed in default. This order was passed on 04/03/2013. After

that, the present Petitioner who claims to be Assignee of the original Plaintiff filed another execution application vide R.D.No.38 of 2014 on 21/11/2013. Learned Jt. C.J.J.D., Pandharpur vide his order dated 15/01/2022 dismissed that execution application. It was observed that the execution application was not filed within the period of limitation of 12 years. Learned Judge relied on the two Judgments of the Hon'ble Supreme Court as follows:

i) Ram Bachan Rai and others Vs. Ram Udar Rai and others reported in AIR 2006 sc 2248.

ii) Manohar Shankar Nale and others Vs. Jaipalsing Shivilsing Rajput and other reported in AIR 2008 SC 429.

3. Learned Judge observed that the period of limitation for execution of Decree prescribed in Article 136 of the Limitation Act is 12 years from when the Decree became enforceable. Since the application for execution i.e. R.D.No.38 of 2014 was filed on 21/11/2013, beyond the period of 12 years from the date of Decree, the execution application was barred by limitation and thus, the execution petition was dismissed.

4. Learned counsel for the Petitioner submitted that, Article 136 of the Limitation Act mentions that, when the Decree was for perpetual injunction, it would not be subject to any period of limitation. He submitted that, since the Petitioner is the Assignee of the Plaintiff, he has right to file the Darkhast petition.

5. I have considered these submissions. Learned counsel for the Petitioner could not justify as to why the second Darkhast was filed in spite of the fact that the original darkhast filed by the original Plaintiff was dismissed by the executing court. The Decree in the suit essentially was for handing over the possession of the encroached area to the Plaintiff. Injunction was a consequential order after the possession was handed over. Since the first part of the Decree could not be executed because the execution proceeding was filed by the present Petitioner after the period of 12 years of the Limitation was over, the proviso to Section 2 of the Article 136 of the Limitation Act was not applicable. In any case, there is a clear attempt made by the Petitioner to file this second execution application, though first execution application filed by the original Plaintiff was disposed of. I do not see any infirmity in

the impugned order and, hence, I do not find any merit in the Petition.

6. The Petition is dismissed.

(SARANG V. KOTWAL, J.)