

VRJ

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

WRIT PETITION NO.7978 OF 2023

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Sanjay Makhanlal Gupta

... Petitioner

V/s.

Anant Bhiva Madhavi

Since Deceased Through His Legal Heirs

... Respondents

Mr. Amanchi Arjun for the petitioner.

Mr. Sandesh D. Patil with Ms. Anusha Amin for
respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 14, 2023

PC.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner (decree holder) is challenging an order passed by the executing Court rejecting the application for delivery of possession on the ground that the operative part of the decree does not contain a direction to deliver the possession.

2. It appears that the petitioner is the original plaintiff who filed suit for possession, declaration and injunction. Prayer clause 12(a) of the plaint reads as under:

“12(a). The defendant be ordered and decreed to handover the quit, vacant and peaceful possession of the suit land to the plaintiff.”

3. The Trial Court, after considering pleadings, framed issues. Issue No.4 reads as under:

“**4.** Whether the plaintiffs are entitled for the quiet and peaceful possession of the suit properties?”.

4. While discussing issue No.4, the Court arrived at the following findings:

“The plaintiffs succeeded to prove their claim in respect of the dispossession as well as the declaration that the two sale deeds dtd.8/9/95 are null and void and not binding on them, and therefore, the plaintiffs are certainly entitled for the vacant and peaceful possession of the suit properties from the defendant No.3.....”

5. While answering issue No.5, the Court held that till handing over possession to the plaintiff, injunction deserves to be granted.

6. The operative part of the judgment and decree reads as under:

“1] The suit is decreed with costs.

2] It is hereby declared and ordered that the two sale deeds dtd.8/9/95 executed by defendant nos.1 and 2 in favour of defendant no.3 in respect of the suit properties more particularly described in Para-1 the plaint registered at Sr. No.3621/95 and 3622/95 in the office of Sub-Registrar, Bhiwandi as null and void and not binding upon the plaintiffs.

3] The defendants are hereby restrain by way of permanent injunction from creating third party interest and to deal and dispose of the suit properties to any third person and also further restrain from transferring the possession of the suit properties to any third person either personally or

through any other person acting or purporting to act on his behalf.

4] Decree be drawn up accordingly."

7. Based on aforesaid judgment and decree, the decree holder filed an application for delivery of possession. The executing Court, by order dated 21st February 2023, held that the operative part of the judgment is silent about handing over possession of suit property by the defendant to the plaintiff. Therefore, there is no question of issuance of possession warrant by executing Court as issuance of such warrant would amount to travelling beyond the decree.

8. Learned advocate for the petitioner submitted that considering pleadings, issues and discussion in the judgment, the executing Court ought to have construed the decree in the light of pleadings, prayers, issues and discussion in the judgment. In the judgment, the Trial Court holds the plaintiff entitled to delivery of possession; however, inadvertently, in the operative part, a specific direction to deliver possession is not incorporated. He submitted that the decree needs to be construed in the light of observations made in the judgment in the context of the pleadings of the parties. In support of his submission, he relied on the following judgments:

- a) **Bhavan Vaja And Ors. vs. Solanki Januji Khodaji Mansang And Anr.** reported in AIR 1972 SC 1371.
- b) **Pratibha Singh And Another vs. Shanti Devi Prasad And Another** reported in AIR 2003 SC 643.

9. Per contra, learned advocate for the judgment debtor-respondents submitted that the decree is not ambiguous. The Court, in its operative part, omitted relief of possession. The executing Court, therefore, cannot travel beyond the operative part of the decree. Grant of possession in this matter would amount to modifying the decree. In support of his contention, he relied on the judgment of the Apex Court in the case of **Sanwarlal Agrawal And Others vs. Ashok Kumar Kothari And Others** reported in (2023) 7 SCC 307.

10. I have heard learned advocate for the parties and perused the record. Before dealing with contentions raised, it is necessary to understand the parameters of powers to execute the Court while construing the decree. In the case of **Pratibha Singh** (supra), the Apex Court was concerned with defective misdescription of suit property and objection to that effect was raised before the executing Court. The Apex Court observed that the successful plaintiff should not be deprived of the fruits of the decree, and a resort can be had to section 152 or section 47 of the CPC, depending upon the facts and circumstances of each case. It is observed that the decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission.

11. At this stage, it is necessary to consider the judgment in the case of **Rajinder Kumar vs. Kuldeep Singh And Others** reported in (2014) 15 SCC 529. The Apex Court in paragraph 21 observed as under:

“**21.** If the suit for specific performance is not decreed as prayed for, then alone the question of any reference to the alternative relief would arise. Therefore, there is no question of any ambiguity. As held by this Court in ***Topanmal Chhotanmal v. Kundomal Gangaram*** [AIR 1960 SC 388] and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties. Thus, there is no question of any alternate relief regarding the damages, etc. in the present case since the suit for the specific performance for the conveyance of the property has been decreed.”

12. It appears that the Apex Court held that in case of any ambiguity, the executing Court must construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the Court is free to refer to the pleadings to construe the true import of the decree. It is observed that no doubt the Court cannot go behind the decree or beyond the decree, but while executing the decree for specific performance, the Court, in case of any ambiguity, has necessarily to construe the decree to give effect to the intention of the parties.

13. Applying the principles delineated by the Apex Court to the facts of the case, it appears that the Trial Court, while passing the decree, framed a specific issue as to whether plaintiffs are entitled to quiet and peaceful possession of the suit property, which was

answered in the affirmative. In the body of judgment in paragraph 3, while discussing issue No.4, the Trial Court recorded a categorical finding that the plaintiffs are certainly entitled to vacant and peaceful possession of the suit properties from defendant No.3. While passing the order of injunction also the Trial Court held that such injunction is necessary till handing over the possession to the plaintiffs. In the operative part clause 1, the Trial Court decreed suit with costs. The prayer clause 12(a) of the plaint seeks to hand over vacant and peaceful possession of the suit land to the plaintiff. There is no indication either in the judgment or in the operative part that the suit was partly decreed or relief of possession was denied by the Trial Court. Once the Court is satisfied that the Trial Court, while passing the decree, considered relief on merits holding a party entitled to such relief, such decree needs to be construed in favour of the party in whose favour the Trial Court records such categorical findings.

14. As held by the Apex Court in the case of **Pratibha Singh** (supra), such an exercise of construing decree can be done under section 47 of the CPC. Moreover, as held in the case of **Rajinder Kumar** (supra), a resort could be had to the judgment and pleadings to construe the decree in favour of the party.

15. On overall consideration of prayers, issues, and discussion while answering the issue, in my opinion, the decree needs to be interpreted to mean decree for possession. Therefore, in my opinion, the decree holder is entitled to the fruits of the decree as held by the Apex Court in the case of **Pratibha Singh** (supra). Hence, the following order:

a) The impugned order dated 21st February 2023 passed by the Civil Judge, Junior Division, Bhiwandi in Regular Darkhast No.9 of 2021 below Exhibit-19 is quashed and set aside;

b) The application below Exhibit-19 in Regular Darkhast No.9 of 2021 is allowed.

16. However, learned advocate for the respondents, at this stage, submitted that the decree passed against them is ex-parte decreed. The delay application against the petitioner challenging the decree has been rejected, against which the respondents have preferred a second appeal before this Court. Therefore, they deserve protection till the appropriate orders are passed by this Court.

17. In that view of the matter, the effect of the present judgment and order is stayed for a period of four weeks from today.

18. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)