



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11283 OF 2018

- 1] Sahayadri Bahujan Vidya Prasarak Samaj,
Sangamner,
for and on behalf of Chairman
Sudhir Bhaskarrao Tambe,
Age : 59 years, Occ : Doctor, Tambe Hospital
R/o. Sangamner, Tq. Sangamner,
Dist. Ahmednagar.
 - 2] Prataprao s/o. Jayvantrao More,
Age: 74 years, Occ : Agril.
R/o. Vadgaon Pan, Tq. Sangamner,
Dist. Ahmednagar.
 - 3] Balaji s/o. Laxman Kute,
Age: 62 years, Occ : Agril.,
R/o. Sukewadi, Tq. Sangamner,
Dist. Ahmednagar.
- .. PETITIONERS**

VERSUS

- 1] Kashinath s/o. Laxman Dhole
(Deceased)
- 2] Rakhmabai Kashinath Dhole
(Deceased)
- 3] Ramnath Kashinath Dhole
(Deceased)
- 3A. Vilas Ramnath Dhole
Age: 36 years, Occ : Business.
- 3B. Pradip s/o. Ramnath Dhole,
Age : 34 years, Occ : Business.

Both R/o. Near Sahayadri College,
Plot No. 371,
Pune-Nashik Highway,
Sangamner, Tq. Sangamner
Dist. Ahmednagar.

3C. Sunanda w/o. Shivaji Shinde
Age : 30 years, Occ : Housewife,
R/o. Gaodevi Road, G.R. Patil College,
Kalyan, Shilroad, Sonarpada,
Dombivali (East), Tal. Kalyan.

3D. Meenabai Ramnath Dhole
(Deceased)

4] Meenabai Ramnath Dhole
(Deceased).

.. RESPONDENTS

...
Mr.R.N.Dhorde, Senior Advocate i/b. Mr.VR.Dhorde,
Advocate for the petitioners
Mr.VY.Bhide, Advocate for the respondent Nos.3A to 3C.
...

CORAM : ARUN R. PEDNEKER, J.

Reserved on : 28.03.2024
Pronounced on : 09.05.2024

JUDGMENT :

1] By way of present writ petition, the petitioners
are challenging the impugned order dated 0307.2018
passed by the Civil Judge Junior Division, Sangamner below
Exh.121 in Regular Darkhast No.492 of 2012.

2] The moot question that arises for consideration by this Court is the interpretation of the decree passed by the Court in Regular Civil Suit No.747 of 1982 i.e. whether the decree is only for the house property admeasuring 16 x 20 ft. or for the entire 38 R. land including the house property situated therein.

Brief facts leading to filing the present Writ Petition can be summarized as under :

3] The petitioners are the decree holder and the original plaintiffs in Regular Civil Suit no.747 of 1982. The respondents are the legal heirs of the original defendant deceased Kashinath Laxman Dhole. The petitioners are challenging the order passed by the Civil Court in execution proceedings on the ground that possession warrant is only issued to the extent of Municipal House No.371 admeasuring 16 x 20 ft. at village Sangamner instead of granting possession warrant of entire area of 38 R. along with the house property and further order of removal of additional illegal construction made by the present

respondents during pendency of the proceedings before the Appellate Court.

4] The petitioner no.1 is the registered public trust registered under the provisions of the Bombay Public Trusts Act, 1950. It is the contention of the plaintiffs that the suit property involved in the present matter is Survey No.371/1A+1B/1-B2 to the extent of 38 R. and more particularly farm house constructed on the said property admeasuring 16 x 20 ft. It is the case of the petitioners that the said property was purchased by the present petitioner – society from Sangamner Vibhag Sahakari Kapus Ginning and Pressing Society Ltd. Sangamner by way of registered sale deed dated 29.01.1974.

5] It is the case of the petitioners that the original defendant i.e. deceased Kashinath Dhole had forcibly broken lock of the constructed farm house of 16 x 20 ft. and trespassed over the said property by taking possession over the constructed portion in the month of May, 1974 and he refused to vacate the same and did not deliver the

possession back. Hence, the petitioners filed Regular Civil Suit No.747 of 1982 for recovery of possession of the said trespassed portion of 16 x 20 ft. The petitioners specifically claim that the petitioners were in possession of the 38 R. along with said constructed portion in pursuance of the sale deed.

6] The suit property is described in the Regular Civil Suit No.747/1982 at para no.1 as under :

१) अहमदनगर जिल्ह्यातील संगमनेर तालुक्यातील संगमनेर बुद्रुक शिवारातील मिळकतीचे वर्णन:

स.नं.	हे.आर.	रु. पैसे
३७१/१अ+ब१ब२	०.३८	१-१८
पैकी उत्तरेकडील		

पुर्व	दक्षिण	पश्चिम	उत्तर
मालादाड कडे जाणारा	३७१/१ अ+ब१	३७१/१अ+ब१/ अ	३७१/१अ +ब/१ब/२/१

येणे प्रमाणे चतुःसिमा पुर्वक जमिनीपैकी खालील वर्णनाची घर मिळकत तिचे वर्णन वरील मिळकतीपैकी उत्तर पश्चिम कोप-यात स्लम वेलला खेटून दक्षिणेस एक घर कौलारु १ फुट x २० फुटी दगडी भिंतीचे मातीत बांधलेले यासी चतुःसिमा पुर्व दक्षिण पश्चिम उत्तर सर्व बाजूने

दाव्यातील जमिन या घरांची म्यु.क.नं. ३७१ आहे. येणे प्रमाणे घर मिळकत तदंगभूत वस्तूसह.

7] The prayer made in the said suit is as under :

८) वादीची विनंती की

अ) फिर्याद अर्जी क.१ यात वर्णन केलेल्या घराचा मालकी हक्काने कब्जा मिळावा.

ब) क. ४ मध्ये वर्णन केले प्रमाणे रु.५४०/- प्रतिवादी कडून देवावेत.

क) फिर्याद दाखल तारखेपासून तो कब्जा मिळोपावेतो जागा वापरल्या बददल दरम्यानचे उत्पन्नाचा हिशेब व्हावा.

ड) वेळोवेळी योग्य व न्याय हुकूम व्हावेत.

इ) सदरचे दाव्याचा खर्च वादीस मिळावा.

येणे प्रमाणे फिर्याद अर्जी असे.

8] The Regular Civil Suit No.747 of 1982 was decreed by order dated 17.08.1991 and the trial Court passed the following order :

ORDER

The suit claim of the plaintiff is decreed as under :-

The defendant are hereby directed to deliver the vacant possession of the municipal house No.371 standing on S.No.371/1A+B/1B2 on or before 15.09.1991 failing which, the plaintiff shall be entitled to get the possession of the suit through the Court.

Defendants do pay an amount of Rs.540/- in imp sum as damages for the occupation of the suit property.

An enquiry be made into the manse profits under order 20 rule 12 of C.P. Code.

Defendants should pay the costs of the suit to the plaintiff and bear their own.

Decree be drawn accordingly.

9] Thereafter, the respondents – defendants filed Regular Civil Appeal No.148 of 2000 before the Appellate Court. The Appellate Court, by order dated 02.04.2012, dismissed the said Appeal with costs. While dismissing the said Appeal, the Appellate Court observed in para nos.15, 16 and 20, as under :

15. The evidence of this witness also makes it clear that the possession of the suit property which is described in plaint para - 1 along with disputed house was handed over to the respondent society.

16. The description of the disputed suit house is given in the sale deed itself. That description is tallying with the description of the disputed suit house given in the plaint. Moreover on behalf of the appellants nothing is brought on record to show that in fact the area of the disputed house is more than the area described in the suit. Therefore I do not find any substance in the submission made on behalf of the appellant that the description of the suit house is not properly given. Besides, the suit house is described as bearing Municipal House no.371. To my mind this is sufficient description to identify the property. Therefore I have no hesitation to come to the conclusion that the suit house is properly described in

the present matter. Accordingly I answer point no.1.

20. *Points 7 and 8 : Admittedly since from 1974 the appellants are the trespassers in the suit property as they are unauthorisedly occupying the same. Therefore definitely the respondent society was kept away from taking the benefit of its own property. In such circumstances definitely the respondent society will be entitled for damages. It has claimed just Rs.15/- p.m. from the appellants by way of damages till filing of the suit which in my opinion is quite proper one. Therefore, definitely the respondent society will be entitled to recover Rs.540/- by way of damages. So also the respondent society will be entitled for future mesne profits. In order to calculate the future mesne profits there is no convincing evidence on record to come to the conclusion regarding exact figure. Therefore it is desirable that separate inquiry is necessary to calculate the future mesne profits. Accordingly I answer points 7 and 8.*

10] Order dated 02.04.2012 passed in Regular Civil Appeal No.148 of 2000 is as under :

ORDER

*Appeal is dismissed with costs.
Decree be drawn up accordingly.
Pronounced in open Court.*

11] Second Appeal was filed by the defendant against the judgment of the Appellate Court and the same

was also dismissed. Thereafter, the application for execution is filed by the petitioners which is at Exhibit-J. The properties described in the said application, which reads as under :

अहमदनगर जिल्ह्यातील संगमनेर तालुक्यातील संगमनेर बुद्रुक शिवारातील मिळकतीचे वर्णन:

स.नं.	हे.आर.	रु. पैसे	पुर्व	दक्षिण	पश्चिम	उत्तर
३७१/१अ+ ०.३८	१.१८	मालादाड	३७१/१	३७१/१अ+ ३७१/१अ		
ब१ब२		कडे जाणारा	अ+ब१	ब१/अ		+ब/१ब/२/१
पैकी						
उत्तरेकडील						

येणे प्रमाणे चतुःसिमा पुर्वक जमिनीपैकी खालील वर्णनाची घर मिळकत तिचे वर्णन वरील मिळकतीपैकी उत्तर पश्चिम कोप-यात स्लम वेलला खेदून दक्षिणेस एक घर कौलारु १ फुट / २० फुटी दगडी भिंतीचे मातीत बांधलेले यासी चतुःसिमा पुर्व दक्षिण पश्चिम उत्तर सर्व बाजूने दाव्यातील जमिन या घरांची म्यु.क.नं. ३७१ आहे. येणे प्रमाणे घर मिळकत तदंगभूत वस्तूसह.

12] The Executing Court by impugned order dated 03.07.2018 in Regular Darkhast No.495 of 2012 below Exh.121 has passed the following order :

ORDER

1) The application is allowed.

2) Issue possession warrant against judgment Debtor with respect to Municipal House No. 371 admeasuring 16 x 20 feet (situated in Survey No.371/1A+B/1B2) at village Sangamner

13] Against the order of the executing Court granting possession of only suit house admeasuring 16 x 20 ft., the present writ petition is filed.

14] It is the contention of the petitioners that the total area of the suit property is 38 R. and that defendant had forcibly broken lock of the house situated in the suit property and made further construction in the remaining area of the petitioners. The decree cannot be limited to the house and the entire property of 38 R. has to be vacated. The question thus arises for consideration is that whether the decree passed in favour of the plaintiff is for the entire 38 R. land or only to the extent of house No.371 admeasuring 16 x 20 ft. in Survey No.371/1A+1B/1-B2 at village Sangamner.

15] It is the contention of the plaintiff that the Appellate Court has observed that the suit property is the entire 38 R. land and as such the decree as confirmed by the appellate Court has to be executed.

16] The respondent – defendants contend that in Writ Petition No.2524 of 2017 the High Court has observed that the plaintiff decree holder wants to execute the decree for additional area surrounding the suit house which only is the suit property. The apprehension of the defendants is groundless as in the application for execution, the decree holder has not mentioned any additional area outside the suit property for seeking execution of the decree. Second contention raised by the respondent - defendants is that Regular Civil Suit No.689 of 2000 was filed by the same plaintiff against the same defendants in which it is mentioned that the suit property in Regular Civil Suit No.747 of 1982 is only the suit house admeasuring 16 x 20 ft. area and not the land admeasuring 38 R. wherein the suit house is situated and thus the petitioners cannot go beyond the pleadings of suit in Regular Civil Suit No. 689/2000.

CONSIDERATION

17] Having considered the rival contention, it is to be noticed at the outset that the plaintiff has also filed

plaint in Regular Civil Suit No.689 of 2000. Perusal of the plaint in RCS No.689/2000 goes to show that the suit property mentioned in this subsequent suit is the entire land admeasuring 38 R. In plaint, there is clear reference to the alleged trespass in the house situated on that land by the defendant giving rise to filing of RCS No.747/1982 wherein the decree is passed, which is sought to be executed. In para no.4 of the plaint of RCS No.689/2000, it is observed that in the year 1994 the defendants have encroached over the suit land except the house for which decree is already passed. This alleged encroachment has given cause of action to the plaintiff to file fresh suit in the year 2000. Regular Civil suit No.689/2000 was tried to be withdrawn with liberty to file fresh suit on the same cause of action on 10.03.2008 but the trial Court refused the liberty. Thereafter, the suit was dismissed for want of prosecution on 14.07.2008. The pleadings in RCS No.689 of 2000 are binding on the plaintiff and estopes it from claiming that the suit property in the present RCS No.747 of 1982 is the entire land admeasuring 38 R. The Executing Court cannot

go beyond decree unless it is shown to be nullity. The respondent - defendants have reiterated their undertaking given to the Executing Court on 23.08.2017 for vacation of the suit house.

18] Para Nos.3, 9A and 9B of the Regular Civil Suit No.689 of 2000 reads as under :

[३] दावा कलम १ मध्ये वर्णन केलेली मिळकत वादी संस्थेने तिच्या भाऊसाहेब गुंजाळपाटील ज्युनिअर कॉलेज व सहकार महर्षी भाऊसाहेब संतुजी थोरात कला, वाणिज्य आणि विज्ञान महाविद्यालयाकरिता दिनांक २९-१-१९७४ रोजी खरेदी घेतली व खरेदी खताच्या दिवशीच दाव्याची मिळकत, त्यामधील झाड झुडूप व तदंगभुत वस्तुसह ताब्यात घेतलेली आहे दाव्याची मिळकत ही मुळची संगमनेर विभाग जिनिंग प्रोसेसींग सोसायटी- च्या मालकीची होती. दाव्याच्या मिळकतीचा वादी संस्थेला ताबा मिळाला तेव्हा दाव्याच्या मिळकतीत उत्तर पश्चिम कोप-यात १० फूट x दगड २० फुट लांबी रुंदीचे दगड मातीत बांधलेले व कौलारु छत असलेले घर होते व या घरामध्ये जिनिंग प्रोसेसींग सोसायटीने दाव्याच्या मिळकतीचा ताबा वादी संस्थेला दिला त्यावेळी सदर कौलारु घर वॉचमनकडून खाली करन मोकळ्या घराचा कब्जा वादी संस्थेला दिला होता, व वादी संस्थेने सदरच्या घरास कुलूप लावून ठेवले होते. मे १९७४ मध्ये प्रतिवादी नंबर १ याने सदर कौलारु घराचे कुलूप तोडून बळजबरीने व अनाधिकाराने कब्जा केला वादी संस्थेचे ज्युनियर कॉलेजचे त्या वेळेचे प्राचार्य श्री फटांगरे यांनी प्रतिवादींना कब्जा करण्यास प्रतिबंध केला असता प्रतिवादींनी त्यांना धमकी दिली म्हणून वादी संस्थेने कौलारी घर जागेचा कब्जा मिळण्यासाठी मे. कोर्टात रे. मु. नं. ७४७/८२ चा दावा दाखल केला. सदरच्या दाव्याचा दिनांक १७-८-१९९१ रोजी निकाल होउन वादी संस्थेचा दावा मंजूर केला व प्रतिवादींनी दाव्यातील घर मिळकतीचा ताबा दिनांक १५-९-१९९१ पुर्वी त्यामधील तदंगभुत वस्तुसह वादी संस्थेला धावा असा हुकुमनामा झाला. रे. मु. नंबर ७४७/८२ च्या दिनांक १७-८-१९९१ च्या निकालावर प्रतिवादींनी अहमदनगर येथील जिल्हा न्यायालयात रेग्युलर सिव्हिल अपिल नंबर ३८०/९१ चे दाखल केले आहे. संगमनेर येथे अतिरिक्त सत्र न्यायालयाची स्थापना झाली असून सदरचे अपिल संगमनेर येथील अतिरिक्त सत्र न्यायालयाकडे ट्रान्स्फर झाले असून ते पेंडींग आहे.

[९] वादी संस्थेची विनंती :-

[अ] दावा कलम १ मध्ये वर्णन केलेल्या मिळकतीमधील प्रतिवादीच्या अनाधिकाराने कब्ज्यात असलेले घर मिळकतीच्या दक्षिण बाजूच्या मोकळ्या जागेत प्रतिवादीनी अनाधिकाराने व बेकायदेशीररित्या वेलेले ओट्याचे बांधकाम काढून घ्यावे माँडेटरी स्वरूपाचा हुकुम देववावा.

[ब] दाव्याच्या मिळकतीत प्रतिवादींनी अतिक्रमण करून कोणतेही बांधकाम करू नये असा प्रतिवादींना निरंतरचा ताकीद मनाई हुकुम देववावा.

19] The say filed by the defendant nos. 3 to 5 in Regular Civil Suit No.689/2000 to the application to withdraw the suit with liberty to file fresh suit on the same cause of action reads as under :

म्हणजे

वादीने ना. हायकोर्टाच्या नकला दाखल केल्या नाहीत. वादीचा प्र.वादीना विनाकारण ८ वर्ष मे. कोर्टात येण्यास भागपाडले. शिवाय दुसरा दावा का करावा लागत आहे याचे सविस्तर कारण दिलेले नाही. सबब याच दाव्यातील कारणावरून दुसरा दावा करण्यास वादीस परवानगी देवू नये. तसेच वादीचा दावा निकाली निघालेस वादीकडून या प्रतिवादीस खर्च देण्याचा हुकुम व्हावा ही विनंती.
ता. १४/७/२००८.

20] In the Regular Civil Suit No.689/2000, the plaintiff applied for unconditional leave to withdraw the said suit with liberty to file fresh suit on the same cause of action and the same was opposed by the defendants therein and the trial Court has passed the order on 14.07.2008 as under :

ORDER

Perused application and say of defendant No 3 to 5. Defendant No 1, 2, 6 are already ex parte.

*Plaintiff and his advocate absent.
After consideration of the suit and defence
of the defendant, permission granted to
withdraw the suit unconditionally.*

21] From the pleadings of Regular Civil Suit No. 689 of 2000, it is clear that the prayer of the plaintiffs in the civil suit No. 747 of 1982 was only to the extent of the house property and thereafter when encroachment was made on open property of the defendants, different suit No.689/2000 was filed and the same was dismissed.

22] It is not possible by this Court to grant decree beyond the prayer / decree granted by the trial Court and upheld by the Appellate Court. The pleadings of the plaintiff in Regular Civil Suit No.689 of 2000 are also binding upon the plaintiff. The plaintiff has filed suit for removal of encroachment on the balance area of the plaintiff-petitioners. In the instant suit i.e. Regular Civil Suit No.747 of 1982, the prayer granted by the trial Court is limited to the house property and the same has been executed by the Executing Court. As such, I see no reason to interfere with the impugned order. Request to grant the execution of

the remaining property of the land to the extent of 38 R. is not lawful as same is not covered within the decree of the trial Court. Hence, the present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC