



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.156 OF 2024**

1. Govind s/o Sadashiv Madadgaonkar
Since Deceased through L.Rs.
 - a. Smt. Chhabubai w/o Govind Madadgaonkar,
Aged 55 years, Occu: Household
 - b. Bandu s/o Govind Madadgaonkar,
Aged about 40 years Occu: Service
 - c. Shivaji s/o Govind Madadgaonkar,
Aged about 36 yrs. Occu: Trader.

Nos. 1(a) to 1(c)
r/o Maliwada, Sherkar Galli, Ahmednagar

2. Rajaram s/o Shadashiv Madadgaonkar,
Aged 60 years, Occu: Trader,
r/o Sarafa Bazar, Ahmednagar.

..Applicants
(Original Defendants)

Versus

1. Vasantryao s/o Haribhau Dedgaonkar
Since deceased through L.Rs.
1. Anil Vasant Dedgaonkar,
Aged 56 yrs. Occu: Business
r/o 608, Sadashiv Peth, Pune.
2. Pradip Vantryao Dedgaonkar,
Aged 52 yrs. Occu; Business,
R/o Juna Kapad Bazar,
Ahmednagar Now dead.
3. Sanjay s/o Vantryao Dedgaonkar,
Aged 50 years, Occu: Business
r/o 608, Sadashiv Peth, Pune.
4. Pravin s/o Vantryao Dedgaonkar,
Since deceased through L.Rs.
- 4A. Ranjana Pravin Dedgaonkar,
Aged 50 yrs. Occu: Household,
r/o Juna Kapad Bazar, Ahmednagar

4B. Amol Pravin Dedgaonkar,
Aged 24 yrs. Occu: Nil,
r/o as above.

5. Sushilabai w/o Vasantrao Dedgaonkar,
Aged 75 yrs. Occu: Household
r/o as above. Now Dead, no more.

..Respondents
(Original Petitioners)

...
Mr. S. M. Kulkarni, Advocate for the Applicants.
Mr. S. S. Bora, Advocate for Respondent Nos.1, 3, 4A and 4B.
...

CORAM : S. G. CHAPALGAONKAR, J.
DATE : 26th NOVEMBER, 2024.

ORDER:-

1. The applicants are taking exception to order dated 30.09.2024 passed by Civil Judge Junior Division, Ahmednagar in Regular Darkhast No.61/2019 below Exhibit-1, thereby issuing possession warrant of the suit property as described in Schedule of execution application Exhibit-1.

2. The applicants are judgment debtors. They suffered decree for delivery of vacant possession of the suit premise to plaintiff in Regular Civil Suit No.25/1989, as per order dated 14.03.2019 passed by this Court in Writ Petition No.6037/2004. The aforesaid decree has been put to execution in Regular Darkhast No.61/2019. The applicants/original defendants filed objections to the Execution Petition vide Exhibits 16, 27 and 38 on the ground that decree holder has not filed city survey record about suit property as per

Civil Rules. Further, during pendency of Writ Petition before this Court, one of the legal heir of original plaintiff namely Pradeep Vasantrao Dedgaonkar died on 08.11.2018. However, his legal heirs were not brought on record. The suit property is not properly described. Further, there is no compliance of Order XXI Rule 11(e) of the Code of Civil Procedure. The Trial Court after hearing the parties, rejected objections raised by judgment debtors and ordered issuance of possession warrant in respect of suit property.

3. Mr. Kulkarni, learned Advocate appearing for the applicants submits that order passed by this Court in Writ Petition No.6037/2004 is subject matter of Review Petition filed by the applicants. Till the decision of the Review Petition, Executing Court should not have issued possession warrant. He would further submit that Executing Court erroneously rejected objections to the execution of decree. Mr. Kulkarni submits that suit was instituted by late Shri. Vasantrao Dedgaonkar against applicants/tenants for eviction. On death of original plaintiff, his legal heirs were brought on record including his wife Sushilabai and four sons namely Anil, Pradip, Sanjay and Pravin. Pradip expired during the pendency of writ petition. However, his legal representatives were not brought on record. Therefore, decree in favour of dead person is nullity. Mr. Kulkarni would further submit that description of property in Execution Petition is not

proper. Four boundaries are not properly explained. Further, required information in terms of Order XXI Rule 11 (e) of the Code of Civil Procedure is not stipulated in the petition. The Execution Petition is not supported by affidavit.

4. Per contra, Mr. Bora, learned Advocate appearing for the respondents submits that present Revision Application is an attempt to protract execution of decree. He submits that there is no foundation in support of objections as raised. He would submit that death of one of the co-owner is of no consequence in case of execution of decree in respect of joint ownership property and judgment debtors cannot take disadvantage of the said fact. He would submit that description of the property is appropriately mentioned in tune with the plaint. Further, there was no adjustment of decretal amount as contemplated under Order XXI Rule 11(e) of the Code of Civil Procedure after passing of the decree. Therefore, none of the objection is legally tenable. In support of his submissions he relies upon judgment of this Court in case of ***Raquel Fernandes Vs. Leopoldina Mendonca Pereira (Writ Petition No.734/2008*** dated ***11.12.2008***) and judgment of the Supreme Court of India in case of ***Delhi Development Authority Vs. Diwan Chand Anand and Ors.***¹.

¹ (2022) 10 SCC 428.

5. Having considered submissions advanced and after going through record, it can be observed that original plaintiff was replaced by his legal representatives. His three sons, legal representatives of pre-deceased son namely Pravin and wife were brought on record of Writ Petition No.6037/2004. It is alleged that during pendency of writ petition, Pradip expired and this fact was not brought on record of writ petition. Therefore, decree has been passed in writ petition ignoring death of Pradip.

6. It is not in dispute that suit instituted by original plaintiff was carried forward by his legal representatives. One of the legal representative i.e. Pradip expired during pendency of writ petition. As such, validity of decree passed in writ petition in favour of dead person is questioned. The issue is no more *res-integra*. The Supreme Court of India in case of ***Delhi Development Authority*** (supra) observed that when suit is instituted in respect of jointly owned property, even if co-owner dies and legal representatives are not brought on record, right to sue would survive and co-owner can continue the suit. Reference can be given to paragraph no.9.4, which reads as under:

“9.4 As observed and held by this Court in the case of K. Vishwanathan Pillai (supra), the coowner is as much an owner of the entire property as a sole owner of the property. No coowner has a definite right, title and interest in any particular item or a portion thereof. On the other hand, he has right, title and interest in every part and parcel of the joint property. He owns several parts of the composite

property along with others and it cannot be said that he is only a part owner or a fractional owner in the property. It is observed that, therefore, one coowner can file a suit and recover the property against strangers and the decree would enure to all the coowners. The aforesaid principle of law would be applicable in the appeal also. Thus, in the instant case, when the original plaintiffs – two coowners instituted the suit with respect to the entire suit land jointly owned by the plaintiffs as well as defendants nos. 9 to 39 and when some of the defendants/respondents in appeal died, it can be said that estate is represented by others – more particularly the plaintiffs/heirs of the plaintiffs and it cannot be said that on not bringing the legal representatives of the some of the cosharers – defendants – respondents in appeal the appeal would abate as a whole.”

7. Similar view has been reiterated in case of ***Raquel Fernandes*** (supra).

8. In light of aforesaid legal position, first objection of applicants is not sustainable.

9. Second objection is regarding description of the property. Comparing the description of the property in the plaint with description shown in the registered Darkhast would depict that description of the property is same. The property is not only identified by four boundaries, but Municipal House Number and City Survey Number are also mentioned. In that view of the matter, objection cannot be sustained.

10. Third objection raised is that there is non-compliance of Order XXI Rule 11(5) of the Code of Civil Procedure. Apparently,

aforesaid provision has no application in the facts of the case. The subject decree is for delivery of vacant possession of the suit premise and both the parties are directed to bear own cost. There is nothing to show that subsequent to decree there was any adjustment between Judgment Debtors and Decree Holders. Therefore, such objection is not available to the applicants.

11. Although Mr. Kulkarni submits that he has filed Review Application against order dated 14.03.2019 in Writ Petition No.6037/2004, that itself cannot be treated as impediment for execution of decree, unless that has been stayed by the Court dealing with Review Application.

12. In that view of the matter, there is no merit in the Civil Revision Application and the same is dismissed.

(S. G. CHAPALGAONKAR)
JUDGE