

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

**WRIT PETITION NO. 16257 OF 2024**

|                                        |   |                |
|----------------------------------------|---|----------------|
| Birmal Bhau Kolekar                    | ] |                |
| Age – 69 years, Occu. - Agriculturist, | ] |                |
| R/o. Shirapur (So), Tal. Mohol,        | ] |                |
| Dist. Solapur                          | ] |                |
| Through the POA                        | ] |                |
| Raju Birmal Kolekar                    | ] | ... Petitioner |

***Versus***

- |    |                                     |   |                 |
|----|-------------------------------------|---|-----------------|
| 1. | Tanubai Maruti Gaikwad              | ] |                 |
|    | Age – 70 years, Occu. - Agriculture | ] |                 |
|    | R/o. Shirapur (So), Tal. Mohol,     | ] |                 |
|    | Dist. Solapur                       | ] |                 |
| 2. | Nimbaji Bhanudas Takmoge,           | ] |                 |
|    | Age – 65 years, Occu. - Agriculture | ] |                 |
|    | R/o. Shirapur (So), Tal. Mohol,     | ] |                 |
|    | Dist. Solapur                       | ] |                 |
| 3. | Baburao Bhagwan Takmoge,            | ] |                 |
|    | Age – 67 years, Occu. - Agriculture | ] |                 |
|    | R/o. Nirale, Tal. Mohol,            | ] |                 |
|    | Dist. Solapur                       | ] |                 |
| 4. | Shantabai Ramchandra Kemkar         | ] |                 |
|    | Age – 72 years, Occu. - Agriculture | ] |                 |
|    | R/o. Shirapur, Tal. Mohol,          | ] |                 |
|    | Dist. Solapur                       | ] | ... Respondents |

\*\*\*\*\*

|                             |                           |
|-----------------------------|---------------------------|
| Mr. Ramdas K. Hake Patil :- | Advocate for Petitioners. |
|-----------------------------|---------------------------|

\*\*\*\*\*

CORAM : S. M. MODAK, J.

DATE : 17<sup>th</sup> DECEMBER 2024

**ORAL ORDER :-**

1. In view of the fact that the executing Court has issued a possession warrant in respect agricultural land, the petition is taken on board by way of urgency. Though the matter is supposed to be listed yesterday i.e. on 16<sup>th</sup> December 2024 it is not listed that is why taken on board. Present petitioner is defendant No.3 whereas present respondents No.1 and 2 are the plaintiffs. The petitioner/ defendant No.3 has purchased the suit land from defendants No.1 and 2. The Suit filed by the plaintiffs for declaration and challenging sale deeds was dismissed by the trial Court on 2<sup>nd</sup> December 2015. This petitioner has not participated in the trial.

2. When the plaintiffs have preferred Regular Appeal No.32 of 2016 it was allowed by the Court of District Judge at Solapur on 16<sup>th</sup> March 2019 (page No.26). The appellate Court allowed appeal in following terms :-

- (i) The entry of deceased Bhagwan on the basis of mutation was declared as illegal.

- (ii) The plaintiffs were declared as owners of land bearing Gat No.22 admeasuring 84 R.
- (iii) The defendant No.3 / present petitioner was directed to handover possession of 42R land from the suit property 1A (page No.22).

3. Though the present petitioner filed Second Appeal, he has not succeeded. Copy of that judgment is not made available however, she applied for review of the order dated 14<sup>th</sup> October 2020. It was rejected as per the order dated 5<sup>th</sup> February 2024 (page No.40).

4. During execution bearing Darkhast No.13 of 2019 the present petitioner has filed an application raising a plea that in fact the land admeasuring 6 R from Gat No.22 was already acquired and the compensation is already paid. This fact was suppressed by the plaintiffs during First Appeal and before the executing Court also. That is why she has requested executing Court for declaring that the Decree Holder (DH) is not entitled to receive possession for 42 R (page No.46). It was rejected by the executing Court as per the order dated 12<sup>th</sup> March 2024 (page No.17).

5. Learned Advocate Mr. Hake-Patil has invited my attention to certain observations. The executing Court rejected that objection

because the Judgment Debtor (**JD**) has not challenged the filing of execution proceeding been without jurisdiction (paragraph No.8). The executing Court observed scope of inquiry under Section 47 of the Code of Civil Procedure, 1908 (**CPC**) is very limited. The executing Court further observed only the matter which is arising subsequent to passing of the decree can be looked into.

6. Mr. Hake-Patil made following submissions :-

- (i) He invited my attention to the copy of possession warrant annexed to the praecipe. In the description column the area of suit land Gat No.22 is mentioned as 42 R.
- (ii) Contention is in fact as per the trial Court decree the area of Gat No.22 as per direction No.3 (c) of page No.37 is only 42 R.
- (iii) His contention is 6 R land is already acquired. He placed reliance on the relevant pages of the Award at page No.51, 52 and 53. They were filed before the executing Court but not considered.
- (iv) He invited my attention to the description at Sr. No.11 of the statement made. It records the name of Limbaji Bhambre, Ganpat Gaikwad, Tarabai Bhambre and Shantabai Khamkar. It also gives details of 0.6 R land been acquired. Shantabai – Vendor from whom this petitioner has purchase the suit land.
- (v) His contention is DH under the garb of pending possession of 42 R land is trying to take possession of the adjoining land belongs to the present petitioner.

(vi) However it is true in the application filed before the executing Court this objection is not taken. There is standing crop on the land possessed by the petitioner. Considering this submission, difficulty may occur when the serving officers who visits suit land. There may be a question about the identity of 42 R land that is to say which belongs to JD otherwise whether it is suit land or not. In such eventualities the executing Court was expected to clarify about 6 R land.

7. As the petitioner has not participated in the original Suit submission is he could not to be appeared before the appellate Court in an Appeal filed by the plaintiffs. In view of that liberty can be granted to the petitioner-JD again apply to the executing Court making all these averments. In view of that I pass following order :

### **ORDER**

- (i) Issuance of possession warrant dated 7<sup>th</sup> November 2024 by the executing Court of CJJD, Mohol District Solapur in Regular Darkhast No.13/2019 is stayed for two weeks from today.
- (ii) The petitioner is at liberty to again apply before the executing Court averring about the acquisition of 6R land from the suit land and location of his other land adjoining to the suit land.

(iii) The executing Court to take a decision on this objection and then to pass appropriate order about issuance of fresh possession warrant.

8. With the above observations Writ Petition is disposed of.

[S. M. MODAK, J.]

KISHOR  
VISHNU  
KAMBLE

Digitally signed  
by KISHOR  
VISHNU  
KAMBLE  
Date:  
2025.01.03  
10:54:09 +0530