

Ajay

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

WRIT PETITION NO. 1924 OF 2024

Musa Fakrudin Shaikh and Anr.

.. Petitioners

Versus

~~Habibbi Hayat Shaikh~~

Since Deceased Through Legal Heirs and Ors.

.. Respondents

-
- Mr. Ajit Vishwnath Alange, Advocate for Petitioners.
 - Mr. Ashok Tajane, Advocate for Respondent No.1.
 - Mr. Sanjay D. Rayrikar, AGP for Respondent Nos.2 and 3 – State.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 14, 2024.

P.C.:

1. Heard Mr. Alange, learned Advocate for Petitioners; Mr. Tajane, learned Advocate for Respondent No.1 and Mr. Rayrikar, learned AGP for Respondent Nos.2 and 3 – State.

2. Present Writ Petition takes exception to the order dated 01.11.2023 passed below Exhibit “129” in Special Darkhast No.139 of 2004. It is an irony that the decree is of the year 2000. Original decree holder has passed away waiting to enjoy the fruits of the decree. All attempts to execute the decree since 2004 are protracted. Two decades have passed without the decree holder realizing fruition of the decree. Plaintiff’s Suit was dismissed. Original Respondent No.1’s Counter Claim was decreed in the year 2000. Thereafter the

long battle for the past 20 years has been played out before the Executing Court.

3. Mr. Alange, learned Advocate for the Petitioners i.e. Judgment Debtors has drawn my attention to the order dated 11.07.2023 passed by the Executing Court while determining Applications filed below Exhibits “106” and “107” by the common order. Applications were made for execution of the decree and determining the boundaries of the encroached portion as decreed, by carrying out survey and measurement as per Exhibit “242” which is the site MAP identifying the encroached portion in colour and appended to the decree itself. The Executing Court after considering the entire gamut of the case and giving cogent reasons, identified that the boundaries of the encroached portion which had already stood determined by virtue of the MAP exhibited below Exhibit “242” appended to the decree passed in the year 2000. In paragraph No.5 of that order, learned Trial Court has noted that the decree is now absolute and final as the Judgment Debtor lost all attempts to challenge the decree right up to the High Court. Naturally the encroached area and portion as determined below Exhibit “242” out of City Survey No.7, 8, 9/1 to 9/5 was now to be handed over to the decree holder. The MAP prepared under Exhibit “242” is by the Court appointed Commissioner during the trial and it has been upheld by the learned Trial Court and is part of the decree. All that is now required

to be done is to demarcate the same and hand over possession to the decree holder. Pleadings and more specifically Exhibit “242” clearly identifies the encroached land. Such Suit property is clearly shown by Red, Green and Blue colour in the said MAP. The Judgment Debtors who are Petitioners before me have no right whatsoever to continue to be in possession of the encroached portion. Application below Exhibit “106” and Exhibit “107” is determined by the Executing Court by its order dated 11.07.2023, but the Judgment Debtors / Petitioners do not stop here.

4. On 13.10.2023, after more than 3 months of the passing of the order dated 11.07.2023, Judgment Debtors have the audacity to file a Review Application of the order dated 11.07.2023. There are no grounds whatsoever made out in the Review and as a matter of fact its an attempt to confuse and delay execution. This Review Application comes to be rejected by the impugned order dated 01.11.2023.

5. If the Judgment Debtors are not stopped now, they will go on forever and ensure that the decree is frustrated forever. Such conduct of the Judgment Debtors cannot be tolerated by the Civil Court in a civil society. This is a clear case where the encroached portion has been clearly identified in the decree, but all attempts are made by the Judgment Debtors on the same repeated grounds to frustrate execution of the decree. This is clearly exemplified by the

Application dated 13.10.2023 filed by the Judgment Debtors. It needs to be reiterated that Exhibit “242” MAP was prepared by the Court Commissioner and upheld in the trial and is part of the decree.

6. Advocate for Judgment Debtors relied upon citations in support of the Review Application which are comprehensively rejected by the learned Executing Court. All this is done with the sole intention of delaying execution of the decree. This has to be therefore viewed strictly and seriously. Even before me, while arguing the learned Advocate has made all efforts to confuse the Court on the location and identification of the Suit land which is encroached.

7. I therefore find no reason to interfere with the order dated 01.11.2023. In view of the findings returned in paragraph No.4 of the order, the directions contained in the order dated 11.07.2023 shall be carried out scrupulously and as expeditiously as possible by the Taluka Inspector of Land Records, Malshiras (for short “**TILR**”) within a period of 15 days from the date of placing an authenticated copy of this order before the TILR. Copy of this order shall be placed before the TILR by the Respondents. Learned AGP shall also inform the concerned TILR.

8. The Executing Court shall monitor that this order is complied with by the TILR and the Judgment Debtor/s hand over the encroached property as identified by the TILR to the decree holder in consonance with the TILR identification and demarcation with Exhibit

“242” which is part and parcel of the original decree. The order dated 01.11.2023 is sustained and upheld.

9. With the above directions, Writ Petition is dismissed.

10. Dismissal of the Writ Petition is certainly not conditional. In the facts and circumstances of the present case, I am of the opinion that the Petitioners should be penalized by making an order for payment of exemplary costs against them. Petitioners cannot be allowed to procrastinate and delay execution of the decree for 20 long years and be absolved.

11. Following reasons are given for order of costs:-

11.1. Suit was filed in the year 1989 by Petitioners predecessor-in-title. This was Suit No. 218/1989. Original Defendant No. 3 in that Suit filed a Counter Claim. After the trial, Suit was dismissed and Defendant No. 3's Counter Claim stood allowed by a decree against the predecessors-in-title of Petitioners. Present Respondent No. 1 is the sole legal heir of original Defendant No. 3. It is an irony that original Defendant No. 3 has expired in the interregnum. Present Respondent No.1 is 83 years old and has been prosecuting the execution proceedings. It is seen that original Defendant No. 3 was working as house-help in Village Akluj, Tal. Malshiras. Present Respondent No. 1 is also working as house-help. If not the original Defendant No. 3, at least her legal heirs are entitled to the fruits of the decree passed in

favour of original Defendant No. 3. The tenor of the present Writ Petition if seen is on the basis that despite admitting the aforesaid facts, a new ground is now raised in ground (c) of paragraph No. 14 that Respondent No. 1 is not the owner and possessor of the encroached area out of City Survey No. 8 and the Government is the owner of the same and therefore Respondent No. 1 i.e. the decree holder has no right to claim for demolition and possession. Such ground cannot be countenanced with. There is a decree passed against the predecessor-in-title of the Petitioners. Delay, rather gross delay is apparent on the face of record on the part of the Petitioners to protract the execution proceedings on some ground or the other. This particular ground mentioned in the Petition cannot be countenanced. Therefore for all the aforementioned reasons, I am compelled to pass the order for payment of exemplary costs against the Petitioners. Rule of law has to pervade in this country and it can only be achieved by passing exigent orders in the case of litigants who take advantage of the system for their own benefit. Present is the case where successors-in-title of the original judgment debtor have succeeded in stalling execution of the decree in the present case for the past 20 years.

12. In view of the above reasons, Petitioners are directed to pay exemplary costs of Rs.1,00,000/- to the private Respondent No.3 who is the decree holder who has suffered for the past two decades within a period of four weeks from today. If costs are not paid as directed, the

same shall be recovered from the Petitioners by the Collector / Tahsildar, Solapur as arrears of land revenue and paid over to the legal heirs of original Defendant No. 3 namely the Respondent No. 1.

13. Though, Mr. Alange has made a valiant attempt to seek reduction of costs upto Rs.50,000/- and persuaded me to reduce the costs. However considering the facts in the present case which are alluded to herein above, I am inclined to maintain the above order. I reject his Application for seeking reduction of costs awarded in the facts of this case due to the conduct of Petitioners to protract the case in Execution indelibly. Petitioners in my opinion do not deserve any leniency.

14. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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