

Ajay

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

WRIT PETITION NO. 10832 OF 2024

Purshottam Vedu Bhadane

.. Petitioner

Versus

Anupreeta Kamlakar Pangarkar

.. Respondent

-
- Mr. Harshal Mirashi, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 06, 2024.

P.C.:

1. Heard Mr. Mirashi, learned Advocate for Petitioner who is the Appellant before the District Court.

2. Appellant has filed Regular Civil Appeal No.41 of 2023 to challenge the judgment and order dated 10.03.2023 passed by the learned Trial Court in Regular Civil Suit No.303 of 2008. Alongwith the Appeal, Appellant has filed Application below Exhibit “4” seeking stay to the judgment and order passed by the Trial Court since execution is proceeded with by the Plaintiff – Decree Holder who is Respondent before me. The stay to the judgment is refused and stay Application is rejected.

3. Mr. Mirashi, learned Advocate for Appellant – Petitioner, in his usual fairness would submit that he has perused the decision of the learned District Court and understood its contents. He would submit

that grave hardship would be caused to the Appellant if he is ousted from the Suit premises considering the fact that the Appellant has stayed put in the Suit property since long i.e. from 2007 onwards and the Suit property has been used by him as his dwelling house. He would submit that until the disposal of the Appeal, the judgment of the Trial Court ought to have been stayed since the Appellant has exercised his statutory right of Appeal before the District Court.

4. I have perused the impugned order and the pleadings. In a given case, Application made by Appellant to challenge a decree passed against him can be considered by any Court sympathetically provided that any triable issue existed and was made out. However in the facts and circumstances of the present case, I am unable to persuade myself to stay the judgment of the Trial Court or interfere with the impugned order after going through the pleadings. The facts in the present case are not only gross but have shocked the conscience of this Court. They are extremely gross and vexatious.

5. Appellant before the District Court is the Petitioner before me, he is a rank trespasser who has by his will or might entered into the Suit property belonging to the Respondent and has stayed put therein since 2007 without any legal right forcibly.

6. Respondent – Decree Holder engaged the Petitioner who is a mason (गवंडी) to carry out some civil work in her house (Suit property)

in 2007. Petitioner is a lady and admitted owner of the Suit property. Since Respondent did not carry out the masonry work, he was removed and disengaged by Respondent and she entrusted the balance civil masonry work to another mason (गवंडी). Being aggrieved with his removal, Petitioner decided to teach a lesson to the Respondent. He was 29 years old at that time and had association with a political party. Petitioner trespassed into Respondent's Suit property by force in 2007 and forcibly occupied the same driving the Respondent to file the Suit for possession in the year 2008. Admittedly Petitioner has no title to the Suit property at all. On repeatedly being asked, Mr. Mirashi would agree that there is no document of title or acquisition of the Suit property with the Petitioner to show that he has purchased the same.

7. What is significant is that in the trial which concluded before the learned Trial Court, the Petitioner did not lead any evidence. Infact, none of his pleadings even show his legal right to reside and occupy the Suit property. What is crucial is to note that he was even unable to satisfy the District Court at the time of hearing of Application below Exhibit "4" as to in what capacity he was occupying or in possession of the Suit property or even how he acquired it in the first instance. Having failed to adduce any document whatsoever with respect to his possession, right, title and entitlement to occupy the Suit property, the Petitioner has not submitted any evidence or material

whatsoever even before this Court when called upon to do so.

8. Mr. Mirashi has placed before me a compilation of 8 documents and would submit that these documents have not been considered by the Appellate Court while deciding the Application below Exhibit “4”. These documents are the Petitioner’s Aadhar Card, Ration Card, Gas Card, Savings Account in Jan Kalyan Co-operative Bank, Electricity Bill dated 09.10.2012 and 21.01.2013 issued by Maharashtra State Electricity Distribution Company Limited, copy of complaint made by his wife about theft of her gold ornaments of Rs.2.5 lakhs from the Suit property and the said theft having been reported widely in the local vernacular marathi newspapers explicitly mentioning the name of the Petitioner’s wife and a notice issued by the Senior Inspector of Police to the Petitioner to summon his wife to attend the police station at the address of the Suit property.

9. Mr. Mirashi would submit that the above documents ought to have been considered as evidence of long standing possession of the Petitioner and stay ought to have been granted. *Prima facie*, and even after going through these documents, I am of the clear opinion that none of these documents establish any right, title, interest and/or the capacity in which Petitioner came into the possession and occupation of the Suit property at all. These documents do not even have a tertiary value in terms of determining his title. Infact, time and again,

this Court had deprecated the use of such documents to prove the legal and juridical title to immovable property by a vexatious and fraudulent litigant like the Petitioner. I am compelled to call the Petitioner a vexatious and fraudulent litigant in view of the gross facts in the present case delineated herein above. Infact Petitioner in the present case is a land grabber who has grabbed the Suit property illegally and because of the delay in the legal system enjoyed his stay in the Suit property belonging to Respondent and driven her to the Court, and intends to continue with the same even in the District Court.

10. It is seen that Appellant has taken advantage of the delay in the legal system to his advantage by occupying the Suit property illegally, unlawfully and without any right. Respondent before me filed a Suit for possession in the year 2008 and it is only after a long protracted trial of 15 years that she got a decree in her favour. Petitioner who was Defendant therein chose not to lead any evidence. It is seen and also observed by the learned District Court while passing the order below Exhibit “4” that he has not filed any evidence whatsoever before the Trial Court of his alleged long standing possession nor did he enter in the witness box. Such litigants cannot be assisted by any Court as they take advantage of the delay in the legal system and of their illegal acts. Even the documents presented by the Appellant before me today in the compilation of documents hold no value whatsoever to determine title of Petitioner to the Suit

property.

11. In that view of the matter, I am in complete agreement with the findings returned by the learned District Court in paragraph Nos.4 and 5 of the impugned order dated 26.06.2024 while rejecting the Application below Exhibit “4”. Therefore, the impugned order is sustained and upheld. The woes of the Plaintiff who is 67 years old today, can only be ameliorated by this Court by passing directions to the learned District Court to determine Regular Civil Appeal No.41 of 2023 as expeditiously as possible and in any event within a period of 12 weeks from today positively.

12. A server copy of this order shall be served by Mr. Mirashi, learned Advocate for the Petitioner on the Respondent’s address positively so that the Respondent – Decree Holder knows about the passing of this order and she shall then defend the Appeal before the District Court accordingly since this Court has now directed the Appellate Court to decide the same in a time bound programme.

13. The Petitioner is emboldened with the fact that even if he has failed in the trial, he would still have the luxury of defending the execution proceedings or the Appeal proceedings and keep occupying the Suit property illegally. Such litigants clearly have a vexatious bend of mind who do not have any respect for the rule of law. They have to be dealt with strictly and a heavy hand. Hence, I am inclined to pass

an order of exemplary costs against the Petitioner before me. It is clarified that the execution proceedings, if filed by Respondent shall be carried on as expeditiously as possible by the Executing Court and they are not stayed by this Court at all, despite giving direction for expeditious hearing of the Appeal filed by the Petitioner. In the facts of this case, Petitioner having no right whatsoever and failing to show any documentary evidence of his title to the Suit property cannot occupy the Suit property even for a single day. Faith in the judicial system and Court of law will be restored only if such orders are passed in these facts. If any obstruction is put by the Petitioner in vacating the Suit property, the Executing Court and the Bailiff shall take police assistance and the Senior Inspector of the jurisdictional Police Station in Nashik shall provide the necessary assistance to the Executing Court.

14. Petitioner is directed to pay costs of Rs.25,000/- to the Plaintiff – Decree Holder – Respondent before me which shall be paid by him within a period of two weeks from today to her. If costs are not paid as directed, the same shall be recovered from the Petitioner by the Collector, Nashik as arrears of land revenue and it shall be paid over to the Plaintiff – Respondent. Though ending up on the losing side, I must put a word of appreciation for Mr. Mirashi, learned Advocate at the Bar who conducted the present matter with utmost fairness and grace and did not circumvent any question put by the Court.

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

[MILIND N. JADHAV, J.]

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