



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.5658/2024

Manik Vrs Ashok

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.M. Chandekar, Advocate for petitioner.

Mr. R.R. Vyas, Advocate for respondent.

CORAM : N.R. Borkar, J.

DATE : 02-12-2024.

This petition takes exception to the order dated 14-06-2024 passed by the learned Joint Civil Judge, Junior Division, Rajura (below Exhibit-19) in Regular Darkhast No.35/2018.

2. By the order impugned, the learned Executing Court has rejected the objection filed by the present petitioner/ judgment debtor under Section 47 of the Code of Civil Procedure.

3. The respondent herein had filed a suit for removal of encroachment and possession against the present Petitioner. The learned trial Court decreed the suit vide judgment and decree dated 30-04-2010. The operative part of the decree reads as under :-

"ORDER

- 1. The suit of the plaintiff is partly decreed with costs.*
- 2. The defendant is hereby directed by way of mandatory injunction to remove the hut immediately only on the Plot No.80 in Ward No.2 owned by the plaintiff only to the extent of area 1085 Sq.feet i.e. 101.5 Sq. Mtr purchased by the plaintiff by registered sale deed dated 21.3.1986 and 20 x 70 feet purchased by plaintiff from Municipal Council by deed dated 9.7.1979.*
- 3. If the defendant failed to remove the hut and hand over the possession then the plaintiff is at liberty to recover the possession immediately at the costs of defendant.*
- 4. The defendant is hereby by way of perpetual injunction restrained from causing obstruction only to the plot owned and possessed by the plaintiff in view of clause no.1.*
- 5. The defendant shall pay the costs of the suit to the plaintiff and bear his own.*
- 6. Decree be drawn up accordingly."*

4. Against the decree of trial Court, the Petitioner herein had filed the First Appeal and the same was dismissed. The Petitioner thereafter had filed the second Appeal before this Court. This Court dismissed the Second Appeal with following observations :

"8. Shri M. Anilkumar, the learned counsel would argue that while the plaintiff has proved title as regards the plot purchased from Mangrulkar, the ownership over plot admeasuring 1400 sqft in area allegedly purchased from the Municipal Council, Rajura is not proved for reasons more than one. The alleged sale deed is unregistered and secondly the said document is executed on behalf of the Municipal Council by the President without any authority, is the submission. Shri M. Anilkumar is justified in contending that as regards one portion of the suit land, i.e. the portion which the plaintiff claims to have purchased from Municipal Council, Rajura, ownership is not proved since the document of ownership is irrefutably unregistered. However, the seminal issue is whether the defendant took illegal or forcible possession from the plaintiff. Concededly, the defendant is not the owner of any portion of suit property and is claiming to have perfected title by adverse possession."

5. The learned Counsel for the petitioner submits that the learned Executing Court has erred in summarily rejecting the objection though the objection was in relation to identity of the suit property. It is submitted that the same is not permissible in view of the judgment of the Hon'ble Supreme Court in Joginder

Singh (Dead) Thr. Lrs. vs Virinderjit Singh Gill (Dead) Thr. Lrs. and others (Dr.), reported in *2024 DGLS(SC) 1066* and the judgment of this Court in *Dr. Madhukar Trimbak Gore vs Vasant Ramkrishna Kolhatkar*, reported in *AIR 1983 Bombay 277*.

6. On the other hand, learned counsel for the respondent has supported the impugned order.

7. I have perused the objection filed by the Petitioner. In the guise of objection, the Petitioner is asking the Executing Court to conduct second trial of the suit. The learned Executing Court has rightly rejected the objection. The petition is dismissed.

(N.R. Borkar, J.)