



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 1518 OF 2025
IN
SECOND APPEAL NO. 458 OF 2023**

Digambar S/o Shankar Pakhre
and others .. Applicants

Versus

Leebai W/o Rambhau Jadhav .. Respondent

Shri Mahesh Sonawane, Advocate for the Applicants.
Shri R. P. Bhomkar, Advocate for the Respondent.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 12TH SEPTEMBER, 2025.**

FINAL ORDER :

. This application is for restoration of possession filed U/Sec. 144 of the Code of Civil Procedure. Applicants-decree holders had filed Regular Darkhast No. 153 of 2019 for possession in pursuance of judgment and decree passed by the Trial Court in Spl.C.S. No. 865 of 2009, which was confirmed by the Appellate Court in R.C.A. No. 14 of 2019. Applicants were placed into possession by following due procedure of law on 03.02.2024. It is alleged that they are dispossessed on 12.06.2024, hence they are required to file the application.

2. Application is contested by the respondent by filing reply. The allegations and contentions of the application are denied. It

is contended that possession was taken from the respondent forcibly due to intervention of few persons. The panchanama conducted on 03.02.2024 is contrary to law. Without following proper procedure a show is made that possession was taken. It is further contended that the complaint made to the police was also in collusion. The possession was never handed over by the respondent.

3. I have already recorded elaborate finding while dismissing the second appeal. It is observed that the possession of the respondent No. 1 was illegal, because the transaction dated 27.11.2000 was not lawful and it was not witnessed by any registered instrument. Respondent was not entitled to retain the possession.

4. It reveals from record that applicants had filed R.D. No. 153 of 2019 seeking possession. There was no prohibitory order and the execution proceeded. The possession warrant was issued and panchanama was conducted. Thereafter, possession was taken from the respondent on 03.02.2024. A possession receipt is also produced on record. The documents filed along with application show that by following due procedure possession was taken by the applicants. Thereafter the execution petition was disposed of on 05.02.2024.

5. Applicants were required to file first information report on 12.06.2024. The contents of FIR show that overt act was

committed by the respondent and her supporters on the issue of possession over the suit land. I am of the considered view that the possession was forcibly taken by the respondent on or about 12.06.2024. Once applicants were entrusted possession by following due procedure of law resorting to R. D. No. 153 of 2019, it was not permissible for the respondent to dispossess the applicants. The action of dispossession is *ex-facie* illegal. This is fit case to invoke powers U/Sec. 144 of the C. P. C.

6. For the reasons stated above, the civil application is allowed in terms of prayer clause 'B'. The civil application is disposed of.

[SHAILESH P. BRAHME J.]

bsb/Sept. 25