



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

WRIT PETITION NO. 2365 OF 2024

Shaikh Rahim Shaikh Nanhu
Died through LR's

- 1A. Shaikh Amin Shaikh Rahim
Age 57 yrs, Occ: Agri
- 1B. Shaikh Usman Sk. Rahim
Age: 70 yrs, Occ: Agri
- 1C. Badrunisa W/o Rajjak,
Age 50 years,
Occu. Agri., R/o. Shirajgaon, Tq. Kannad,
Dist. Aurangabad
- 1D. Sk. Hussain S/o. Sk. Ahmed,
Age: Major,
Occu. Agri., Deceased through his LR,
- 1E. Shaikh Majed S/o Sk. Hussain
Age: 35, Occ: Service
R/o. Garka Bunglow Wards,
Kannad, Tq. Kannad, Dist. Aurangabad.
- 1F. Sk. Sardar S/o Sk. Ahmed,
Age: 58 yrs, Occ: Labour
- 1G. Sk. Mushtaq S/o. Sk. Ahmed,
Age: 51 yrs, Occ: Labour
- 1H. Sk. Akil Sk. Ahmed,
Age: 40 yrs, Occ: Labour
- 1I. Sk. Javed Sk. Rajjak,
Age: 34 yrs, Occ: Labour
(All R/o. Garka Bunglow Wards,
Kannad, Tq. Kannad, Dist. Aurangabad)

.....PETITIONERS

VERSUS

- 1. Sitaram Shankar More (Deceased)
Through LR's
- A-1. Rukmanbai Sitaram More
Age: 60 yrs, Occ: HH

- A-2. Surekha Sitaram More
Age: 44 yrs, Occ: HH
A-3. Manjusha Sitaram More
Age: 44 yrs, Occ: HH
A-4. Anjali Sitaram More
Age: 40 yrs, Occ: HH
A-5. Jyoti Sitaram More
Age: 38 yrs, Occ: HH
A-6. Vinod Sitaram More
Age: 33, Occ: Service
(All R/o: Bhilpattam Galli, Kannad,
Tq. Kannad, Dist. Aurangabad)

.....RESPONDENTS

Mr. Amol Sawant h/f Mr. U. A. Bhadgaonkar, Advocate for the
Petitioners

Mr. A. R. Devkate, Advocate for Respondent nos.A-1 to A-6

CORAM : ROHIT W. JOSHI, J.

DATED : 23RD JUNE, 2025

ORAL JUDGMENT :-

. The petitioners in the present petition are judgment debtors in Regular Darkhast No.5 of 2014. The said Darkhast proceeding arises out of a suit for Specific Performance of Contract and Possession being Regular Civil Suit No.4 of 2001, filed by one Sitaram Shankar More. The respondents are legal representatives of said Sitaram Shankar More. The petitioners will hereinafter referred to as judgment debtors and the respondents will be referred as decree holders.

2. Regular Civil Suit No.4 of 2001 was decreed vide judgment and decree dated 29.12.2014 passed by the learned Joint Civil Judge, Junior Division, Kannad. Thereafter, the judgment debtor preferred First Appeal being Regular Civil Appeal No.68 of 2015, which was dismissed by the learned District Judge-1, Aurangabad vide judgment and decree dated 18.03.2019. The Second Appeal preferred by judgment debtors being Second Appeal No.480 of 2021 came to be dismissed by this Court vide judgment dated 03.01.2022. The controversy with respect to merits of the matter, thus stood settled and crystallized up to this Court.

3. The decree holders preferred execution petition being Regular Darkhast No.5 of 2015 for execution of the decree for Specific Performance of Contract and Possession. The learned Executing Court has executed the sale deed in favour of the decree holders through Assistant Superintendent of the Court on 29.07.2019. Subsequently, the judgment debtors have executed sale deed dated 24.08.2020 with respect to plot admeasuring 297 square meters of land bearing survey no.33/1 in favour of one of the judgment debtors; namely Sk. Akil Sk. Ahmed. The suit property, which is a portion of land

admeasuring 0.02HR, i.e. 200 square meters in survey no.33/1 is a part of larger survey number and therefore for delivery of possession of the suit property to the decree holders, measurement of the land was ordered by the learned Executing Court. The suit property came to be measured by the office of Deputy Superintendent of land records. The office of Deputy Superintendent of Land Records, Kannad has issued a report dated 29.08.2023, referring to the sale deed dated 29.07.2019, executed through the Court in favour of the decree holders as also sale deed dated 24.08.2020, executed by the judgment debtors in favour of one of the judgment debtors. It is mentioned in the measurement report that although, the Western and Eastern boundaries in the two sale deeds are described differently, the location of the property is the same.

4. In view of the said measurement report, the learned Executing Court has passed order dated 05.02.2024, directing that the decree holders should be placed in possession of the suit property as identified by the said measurement report. This order dated 05.02.2024 is a subject matter of challenge in the present petition.

5. Learned Advocate Mr. Amol Sawant, appearing for the petitioners/judgment debtors contends that under the garb of execution of decree, the decree holders cannot take possession of some property other than the suit property. Referring to the Western and Eastern boundaries mentioned in the two sale deeds, he contends that the decree holders are playing mischief by taking possession of some other property under the guise of execution of decree *qua* the suit property which is located at some other place. As stated above, the foundation of the objection raised by the petitioners/judgment debtors is the sale deed dated 24.08.2020.

6. Perusal of the sale deed dated 24.08.2020 will demonstrate names of judgment debtors appear as vendors in the said sale deed. The purchaser is also one of the judgment debtors. Most importantly, the purchaser Sk. Akil Sk. Ahmed is also vendor no.6 in the sale deed dated 24.08.2020. The sale deed dated 24.08.2020 is executed after the sale deed in favour of decree holders is executed and registered in favour of the decree holders through the Court Superintendent on 29.07.2019. Perusal of description of properties in both the sale deeds will demonstrate that both these properties are part

of land bearing survey no.33/1 of village Kannad located within the municipal limits of Municipal Council, Kannad. Whereas, in the sale deed of the decree holders, the Eastern boundary is mentioned as layout of Jawahar Co-operative Housing Society and the Western boundary is referred as remaining portion of survey no.33/1, in the sale deed of the judgment debtor no.16, who is also vendor no.6, the Eastern and Western boundaries appear to be mentioned referring to the names of plot holders. It needs to be mentioned that undisputedly, a residential layout is carved out over land bearing survey no.33/1, of which the suit property is a part. The office of Deputy Superintendent of Land Records has clearly given a report that the property in the sale deed of the decree holders is the same property, which is stated at the judgment debtors to be a property purchased by judgment debtor no.16.

7. Perusal of the objection raised by the judgment debtors does not indicate that the plot of Nasimabee Shaikh Sandu, who is also a judgment debtor is not a part of layout of Jawahar Co-operative Housing Society and likewise, the objection does not state that land of Sabirabee Shaikh is not a

part of survey no.33/1.

8. In fairness, the learned Counsel for the petitioners makes a statement that although, Saberabee is not a judgment debtor, she is a family member. The gesture of the learned Counsel for the petitioner is appreciated.

9. Having regard to the aforesaid, in the considered opinion of this Court, the learned Executing Court has not committed any error in passing order directing that the respondents/decreed holders should be placed in possession of the property as per the measurement report dated 29.08.2023, at Exhibit 66 issued by the office of Deputy Superintendent of Land Records, Kannad. The impugned order therefore, does not call for any interference. The Writ Petition is therefore **dismissed** with no orders as to costs.

10. Pending Civil Applications, if any, stand disposed of.

(ROHIT W. JOSHI, J.)