



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO. 3801 OF 2024

Baburao Rama Rakade,
Age: 80 Years, Occupation: Agriculturist,
Through His G. P. A. Holder
Shivaji Baburao Rakade,
Age: 53 Years, Occupation: Agriculturist
R/o.: Bharadi, Taluka: Sillod,
District: Aurangabad.

... PETITIONER

VERSUS

1. Tukaram Ganu Rakade,
Age: 55 Years, Occupation: Agriculturist,
R/o.: Bharadi, Taluka: Sillod,
District: Aurangabad.
2. Pandit Shripat Rakade,
Deceased Through His Legal Heirs
- 2-A] Kasabai w/o. Pandit Rakade,
Age: 60 Years, Occupation: Household,
R/o.: Bharadi, Taluka: Sillod,
District: Aurangabad.
- 2-B] Bhausahab s/o. Pandit Rakade,
Age: 40 Years, Occupation: Agriculturist,
R/o.: Bharadi, Taluka: Sillod,
District: Aurangabad.
- 2-C] Ashok s/o. Pandit Rakade,
Age: 33 Years, Occupation: Agriculturist,
R/o.: Bharadi, Taluka: Sillod,
District: Aurangabad.
- 2-D] Sunita w/o. Bhanudas Badak,
Age: 30 Years, Occupation: Household,
R/o.: Palsi, Taluka : Sillod,
District: Aurangabad.

- 2-E] Anita w/o. Pravin Nikam,
Age: 28 Years, Occupation: Household,
R/o.: Kotnandra, Taluka: Sillod,
District: Aurangabad.
3. Pundlik Shripat Rakade,
Deceased Through His Legal Heirs.
- 3-A] Janabai w/o. Pundlik Rakade,
Age: 60 Years, Occupation: Agriculturist.
- 3-B] Gajanan s/o. Pundlik Rakade,
Age: 43 Years, Occupation: Agriculturist.
- 3-C] Nirmalabai w/o. Bala Gorade,
Age: 45 Years, Occupation: Agriculturist.
Respondent Nos.3-A to 3-C
All R/o.: Upli, Taluka: Sillod,
District: Aurangabad.
4. Khandu Sampat Rakade (DEAD),
5. Shriram Ganu Rakade,
Age: 50 Years, Occupation: Agriculturist,
R/o.: Bharadi, Taluka: Sillod,
District: Aurangabad
6. Bapurao Ganu Rakade,
Age: 52 Years, Occupation: Agriculturist,
R/o.: Bharadi, Taluka: Sillod,
District: Aurangabad.

... RESPONDENTS

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- Mr. S. V. Suryawanshi, Advocate for the Petitioner
 - Mr. P. F. Patni, Advocate for Respondent No. 1, 5 & 6
 - Mr. V. P. Latange and Ms. Apporva Songire, Advocate for Respondent Nos. 2-A to 2-C and 3-A & 3-B.
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CORAM : ROHIT W. JOSHI, J.

DATE : JUNE 25, 2025

ORAL JUDGMENT :

1. The petitioner in the present petition is the decree holder in Regular Darkhast No. 7 of 2011, which is pending on the file of learned Civil Judge, Junior Division, Sillod. The respondents are judgment debtors. The parties will be referred in the body of judgment as decree holder and judgment debtors.

2. The decree holder had filed a suit for perpetual injunction being Regular Civil Suit No. 201/1995 with respect to property bearing Gat No. 336 of Village Bharadi, Tq. Sillod, Dist. Aurangabad (hereinafter referred to as “the suit property”). The decree holder had sought a decree for perpetual injunction that judgment debtors should not disturb his peaceful possession over the suit property.

3. The suit was initially dismissed by the learned Trial Court. However, Regular Civil Appeal No. 386/2000 filed by the decree holder was decreed by the learned First Appellate Court vide judgment and decree dated 19.07.2003. The judgment debtors had preferred a second appeal along with an application for condonation of delay. However, the said application for condonation of delay was rejected, and consequently, the second appeal itself came to be dismissed.

4. Thereafter, the decree holder initiated execution proceedings by filing Regular Darkhast No. 7 of 2011 on 29.04.2011 for enforcement of the decree for perpetual injunction. It is pertinent to note that the decree holder, in the prescribed format of the Darkhast application, did not state that he was dispossessed from the property. However, the decree holder had filed another application at '**Exhibit 60**' *inter alia* contending that the judgment debtors had taken forcible possession of the suit property in the month of March 2009.

5. The judgment debtor Nos. 2 and 3 filed objections under Section 47 of the Code of Civil Procedure on 24.08.2011, contending that the decree for perpetual injunction could not be executed to obtain possession of the suit property from the judgment debtors, as that would amount to executing a decree for possession in favour of the decree holder. The said objection was upheld by the learned Executing Court vide order dated 25.04.2014.

6. Aggrieved by the aforesaid order dated 25.04.2014, the decree holder filed Writ Petition No. 6566 of 2014, which was partly allowed by this Court vide judgment and order dated 28.03.2018. The contention that possession cannot be delivered while executing a decree for perpetual injunction was rejected. The learned Executing Court was

directed to conduct appropriate inquiry in the matter and to decide execution petition in accordance with law.

7. Subsequently, the judgment debtor nos. 2 & 3 expired and their legal representatives were allowed to be brought on record vide order dated 02.01.2019. The legal representatives of judgment debtor no. 3 filed an objection under Order XXI Rule 97 of the Code of Civil Procedure on 30.01.1994. The learned Executing Court has rejected the said petition vide order dated 24.10.2019.

8. Subsequently, legal representatives of judgment debtor no. 2 also filed a similar objection under Order dated XXI Rule 97 on 10.03.2023, which was also rejected by the learned Executing Court vide order dated 24.11.2023. While this objection (**Exhibit 60**) was still pending, they filed another application on 13.10.2023 (**Exhibit 68**) seeking framing of an issue regarding dispossession and permission to lead evidence on that issue. It needs to be mentioned that the objection dated 10.03.2023 was already rejected by the time '**Exhibit 68**' came up for hearing.

9. Nonetheless, the learned Executing Court allowed '**Exhibit 68**' vide impugned order dated 18.12.2023 and directed framing of an issue regarding dispossession and recording of evidence.

10. This approach suffers from a jurisdictional error. As the objection at '**Exhibit 60**' was already rejected on 24.11.2023, there remained no pending objection requiring adjudication. Hence, there was no occasion for framing any issue or permitting the parties to lead evidence. The application at '**Exhibit 68**' essentially sought framing of issues for adjudication of a rejected objection. The impugned order allowing such application is therefore without jurisdiction.

11. It is also well settled that the Executing Court cannot go behind the decree. The decree for perpetual injunction granted in favour of the decree holder conclusively establishes his possession on the date of decree. The judgment debtors, by asserting their own possession and by contending that execution would amount to grant of possession, have admitted their act of dispossession in breach of the decree. Hence, there is no necessity to frame any issue or permit evidence on the aspect of possession.

12. In view of the above discussion, this Court is of the considered view that the impugned order dated 18.12.2023 suffers from

jurisdictional error and is liable to be quashed and set aside. The petition is accordingly **allowed** in the following terms:

(i) The order dated 18.12.2023 passed by the learned Civil Judge, Junior Division, Sillod on '**Exhibit 68**' in Regular Darkhast No. 7 of 2011 is quashed and set aside.

(ii) In view of the directions already issued by this Court in judgment dated 28.03.2018, the learned Executing Court is directed to dispose of the execution petition by executing the decree and recording satisfaction of execution on or before 31.08.2025.

(iii) The matter shall be taken up on a day-to-day basis and no adjournment shall be granted to the judgment debtors.

13. The civil application, if any, stands **disposed of**.

[ROHIT W. JOSHI]
JUDGE