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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6871 OF 2018

Bhausahab Vishwanath Gunjal
Age - 73 years, Occ - Agriculture
R/o Sangamner Khurd, Taluka - Sangamner
District - Ahmednagar

PETITIONER

VERSUS

1. Shivram Kisan Gunjal (Deceased)
- 1A. Radhesham Shivram Gunjal
Age - 58 years, Occ - Doctor
R/o Khandgaon, Taluka - Sangamner
District - Ahmednagar
- 1B. Nanapati Shivram Gunjal
Age - 52 years, Occ - Agriculturist
R/o Khandgaon, Taluka - Sangamner
District - Ahmednagar
- 1C. Namdev Shivram Gunjal
Age - 50 years, Occ - Agriculturist
R/o Khandgaon, Taluka - Sangamner
District - Ahmednagar
- 1D. Dinkar Shivram Gunjal
Age - 40 years, Occ - Agriculturist
R/o Khandgaon, Taluka - Sangamner
District - Ahmednagar
- 1E. Anil Shivram Gunjal
Age - 35 yeas, Occ - Agriculturist
R/o Khandgaon, Taluka - Sangamner
District - Ahmednagar

RESPONDENTS

2. Ramesh Vishwanath Gunjal
3. Suman Sadashiv Gunjal
Died Through LRS
- 3A Sadashiv Barak Gunjal
Age - 65 years, Occ - Agriculturist

DELETED

R.o Khandgaon, Taluka – Sangamner
District - Ahmednagar

- 3B. Avinash Sadashiv Gunjal
Age – 49 years, Occ – Agriculturist
R.o Khandgaon, Taluka – Sangamner
District – Ahmednagar
- 3C Ravindra Sadashiv Gunjal
Age – 46 years, Occ – Agriculturist
R.o Khandgaon, Taluka – Sangamner
District – Ahmednagar
- 3D Nitin Sadashiv Gunjal
Age – 43 years, Occ – Agriculturist
R.o Khandgaon, Taluka – Sangamner
District - Ahmednagar
4. Savita Anil Gunjal
Age – 30 years, Occ – Agriculturist
R/o Sangamner Khurd,
Taluka – Sangamner, District - Ahmednagar

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Mr. P. S. Dighe h/f Mr. V. R. Dhorde, Advocate for the Petitioner
Mr. K. N. Shermale, Advocate for Respondents No. 1B to 1E & 4
Mr. Shaikh Mobin, Advocate for Respondent No.3A to 3D
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[CORAM : MANJUSHA DESHPANDE, J.]

RESERVED ON : 12th FEBRUARY, 2025
PRONOUNCED ON : 5th MARCH, 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the respective parties.
2. Mr. Shaikh Mobin, learned Advocate makes a statement that he has received instructions to appear on behalf of legal heirs of deceased Respondent No.3, who are already brought on

record and notices were issued to them.

3. Petitioner has challenged order dated 1st April, 2017 passed by Joint Civil Judge, Senior Division, Sangamner, below Exhibits- 19, 34 and 63 in Regular Darkhast No. 102 of 2010, whereby prayer of the Petitioner for issuance of possession warrant has been rejected.

4. The Petitioner is the original Plaintiff along with one Ramesh Gunjal, who had filed Regular Civil Suit No. 239 of 1978 before Civil Judge, Junior Division, Sangamner claiming that agreement to sale dated 8th March, 1967 was invalid and illegal as Vishwanath Gunjal, their father had no right to alienate the land at the relevant time. Their father had executed agreement to sale on 2nd August, 1967 in respect of portion of 2 Acre land out of Survey No. 48/1 for a consideration of Rs.2,500/-. The suit land was Vatan land and vested in the Government, prior to execution of agreement to sale on 8th August, 1967. The suit land was thereafter re-granted on 21st January, 1975. The suit was opposed by Respondent Shivram Kisan Gunjal on the ground that he had parted with the whole of the consideration amount and only sale deed remained to be executed.

5. After considering the rival submissions, the suit was dismissed by the Trial Court on 18th September, 1981. The

Petitioner, along with Ramesh Gunjal, filed Regular Civil Appeal No. 420 of 1981, in the District Court, Ahmednagar. The Appellate Court decreed the suit in favour of the Plaintiffs on 9th October, 1984, thereby declaring that the agreement to sale dated 8th August, 1967 is illegal. Second Appeal No. 389 of 1989 was filed by the Respondent Shivram Kisan Gunjal, in this Court challenging judgment and decree passed in Regular Civil Appeal No. 420 of 1981. The Second Appeal was dismissed by this Court on 16th April, 2010. The Respondent approached the Supreme Court, by filing SLP No. 7929-7930 of 2011 which came to be dismissed on 22nd August, 2013.

6. In view of the decree passed in their favour, Petitioner filed Regular Darkhast No. 102 of 2010 before Civil Judge, Junior Division, Sangner claiming possession of the suit property as per the decree.

7. In the meanwhile, during pendency of the Second Appeal, Ramesh Gunjal, who was one of the Plaintiffs along with the Petitioner, had sold his share in favour of Respondent No.3 Suman Gunjal. During Pendency of the Second Appeal, this Court granted liberty to the present Respondents to add Suman Gunjal as party to the Second Appeal, since she had stepped into the shoes of Ramesh Gunjal. Consequently, Suman Gunjal was added

as one of the Respondents to the Second Appeal No. 389 of 1989. Therefore, she became co-plaintiff along with the Petitioner. Accordingly, Respondent No.3 is also entitled to get share in the suit property, since she has stepped into shoes of Ramesh Kisan Gunjal, she is added as Respondent in the Regular Darkhast No. 102 of 2010. It is to be noted that Shivram Gunjal had filed an application Exhibit-124 before the Executing Court seeking direction to bring legal heirs of Ramesh Gunjal on record. However, his application was rejected by the Executing Court on the ground that Suman Gunjal, who has purchased share of Ramesh Gunjal is already party to the proceedings. Hence, there is no necessity to bring legal heirs of Ramesh Gunjal on record.

8. It is contention of the Petitioner that since 1978, the Petitioner is trying to get possession back from Respondent No.1 i.e. Shivram Kisan Gunjal and after his death from his legal heirs. However, the Respondents are avoiding to hand over possession of the suit land, on one or the other pretext.

9. It is the contented that the Petitioner has filed one more application Exhibit-34 requesting the Executing Court to issue possession warrant, since SLP filed by the Respondents is dismissed on 22nd August, 2013. Even the said application was resisted by the Respondents hence that application was kept

pending till 1st April, 2017. It is the contended that he has filed 3 applications Exhibits-19, 34 and 63 seeking execution of the decree and for issuance of possession warrant. However, all the three applications were kept pending by the Executing Court, since they were resisted by the Respondents. The Applications are resisted by the Respondents on frivolous grounds one after the other and avoided issuance of possession warrant.

10. It is the contention of the Petitioner that the Executing Court has failed to exercise the jurisdiction vested in it and has rejected the applications Exhibits-19, 34 and 63, by common order dated 1st April, 2017, rejecting it on the frivolous and untenable grounds that the decree cannot be executed as there is no partition of the suit property and the Executing Court cannot hand over the possession of the property to the decree holders, unless the shares of decree holders are decided.

11. It is the contention of the learned Advocate for the Petitioner that there is no necessity of defining shares of the decree holders. The Darkhast is filed by the Petitioner for and on behalf of original plaintiffs therefore, it is also on behalf of Suman Gunjal, who is claiming through Ramesh Gunjal. It is further submitted that Suman Gunjal, who has stepped into the shoes of original plaintiff, had never demanded a separate share. It is

between Suman Gunjal and the Petitioner to sort out their respective shares amongst themselves and Respondents have no concern whatsoever, except handing over the possession of the suit property to the Petitioner and Suman Gunjal. In spite of the clear stand of the Petitioner, the Executing Court has refused to issue possession warrant and thereby failed to exercise the jurisdiction vested in it, by going beyond the decree. Hence, the order passed by the Executing Court needs to be interfered with by this Court.

12. Learned Advocate for the Petitioner has relied on the judgment of the Supreme Court in the case of ***“Satyawati V/s Rajinder Singh and Another”*** reported in **2014 (1) MhLJ 624**, in support of his contention that once decree is passed in favour of appellant, the Executing Court should not consider other factors, which do not form part of the judgment. It is further observed that, it is really agonizing to learn that the appellant-decree holder is unable to enjoy fruits of her success even today i.e. in 2013 though Appellant - Plaintiff had succeeded in January, 1996. Referring to the case of Privy Council in the case of ***“General Manager of the Raj Durbhnga under the Court of Wards V/s Maharajah Coomar Ramaput Singh”***, wherein it is observed that, difficulties of litigant in India begin when he has obtained a

decree. It is further observed that even in 1925, while quoting the aforesaid judgment of the Privy Council in case of ***“Kuer Jang Bahadur V/s Bank of Upper India Ltd., Lucknow” AIR 1925 Oudh 448***, the Court was constrained to observe that Courts in India have to be careful to see that process of the Court, and law of procedure are not abused by the judgment debtors in such a way as to make Court of law instrumental in defrauding creditors who have obtained decrees in accordance with their rights.

13. Learned Advocate for the Petitioner requests to impose exemplary cost on the Respondent – defendants, since they are consistently creating unwarranted hurdles in execution of the decree. In support of his claim of exemplary cost, reliance is placed by the learned Advocate for the Petitioner in the case of ***“Warna Valley Sakhari Khardi Vikri Society Ltd., Islampur V/s Ashok J. Gaikwad and Others”*** reported **2015 (3) MhLJ 559**, wherein it is observed that the Petitioner has been making repeated applications to frustrate execution proceedings. Notwithstanding the dismissal of such applications, the Petitioner who carries the impression that it is its right to do so persists in filing further applications only with a view to protract and frustrate execution of proceedings is clear abuse of judicial process. It is further observed that in fact the Court has rightly

dismissed the application, however, the Court has slightly erred in not imposing exemplary cost of Rs.50,000/- on the Petitioners and, therefore, cost was imposed by this Court.

14. Relying on the observations as above, it is contended that even present Petitioner is deprived from enjoying the fruits of his decree by the Respondents on one or the other count. Therefore, this is a fit case to impose exemplary cost on the Respondents.

15. The prayer made in the Writ Petition is resisted by the learned Advocate Shri. Shermale representing the Respondents No.1 B to 1E and 4. According to him, considering the developments that have taken place subsequent to the order granting decree in favour of the Petitioner, the Executing Court has rightly refused to issue possession warrant in favour of the Petitioner.

16. According to him, Ramesh Gunjal had sold his share during pendency of the proceedings to Suman Gunjal and now even Suman Gunjal has passed away. Therefore, legal representatives of Suman Gunjal are required to be brought on record before issuing possession warrant. It is further contended that stand of the legal heirs of Suman Gunjal, who are brought on record, will have to be taken into consideration while issuing possession warrant. Suman Gunjal might have purchased the suit land

during pendency of the Second Appeal, however, now there is change in the circumstances due to death of Suman Gunjal. Therefore, unless and until shares of each of the decree holder is determined and divided by metes and bounds, the decree is not at all executable.

17. While deciding the applications filed by the Petitioners, the Executing Court has recorded that as per the decree, the possession is granted in favour of the two plaintiffs jointly. There is common decree, which is drawn in favour of two plaintiffs. In such situation, when one of the plaintiffs has sold his part of the share of the property and he has passed away during pendency of the proceedings, possession warrant cannot be issued in favour of only one of the decree holders unless shares of each of the plaintiff are determined and divided by metes and bounds. Therefore, unless shares of the persons who are eligible to receive possession under the decree is determined, possession warrant cannot be issued in favour of only one of the decree holder. While rejecting the applications by common order, the Executing Court has relied on the observations of the Supreme Court in the case of ***"Jagdish Dutt V/s Dharma Pal"*** reported in ***AIR 1999 SC 1694***.

18. The Decree of the Appellate Court in Regular Civil Appeal

No. 420 of 1981 reads thus :

“The Appeal is allowed.

The Judgment and Decree of the lower court is set aside.

Defendant – Shivram Kisan Gunjal to put the plffs. In his possession of the suit property as described in plaint para No.1 and the plffs. to recover possession thereof.

An inquiry be held under O.81 R. 18 (c) of the CPC in respect of mesne profits.

The Deft. do pay costs of the plffs. throughout and bear his own costs.”

19. Upon going through the decree, there is no doubt that the property described in plaint is directed to be handed over to the plaintiffs. Issue No.1 framed in the Appeal reads thus :

“i. Do the plffs. prove that they are entitled for filing suit for possession on behalf of the joint family of theirs as alleged?

20. The issue has been answered in affirmative, and a finding is recorded by the Appellate Court that, Plaintiff No.1 is the eldest brother and Plaintiff No.2 is the youngest brother and they have brought the suit for joint family. Representation of the suit is for joint family which is proper. Hence, it is held that plaintiffs are entitled to the suit for possession on behalf of their joint family. It is held that defendant is a trespasser and liable to be

evicted. It is also not disputed that, plaintiff Ramesh Gunjal has sold his entire share in favour of Respondent No.3 Mrs. Suman Gunjal and she had been added as party in Second Appeal as she had stepped in the shoes of Ramesh Gunjal. She had been also added as party Respondent in the Execution Proceedings.

21. The Execution Application No. 102 of 2010 has been filed by the Plaintiff on behalf of all the persons in the joint family. Order XXI, Rule 15 of the Civil Procedure Code provides that any one of the decree holders can apply for execution of whole decree for the benefit of all the decree holders.

22. The Petitioner has filed the Execution Application in the representative capacity, in view of Order XXI, Rule 15 of the Civil Procedure Code. It also needs to be appreciated that, there is already a finding recorded by the Appellate Court that, the suit itself has been filed by the Plaintiffs in the representative capacity for the joint family. This Court, in Second Appeal has directed to add Suman Gunjal who has stepped into the shoes of one of the original Plaintiff, Ramesh, who is already party to the Execution.

23. Intervention Application has also been filed by one Savita Anil Gunjal under Order XXX, Rules 91 to 101 of the Civil Procedure Code, as a obstructionist. Her application below

Exhibit-91 in Regular Darkhast No. 102 of 2010, has been decided by the Executing Court, vide judgment dated 29th April, 2015. The Applicant is purchaser of the suit property from legal heirs of Bhaskar Vishwanath Gunjal, who is one of the brothers of the Plaintiff. An issue has been framed by the Executing Court that :

“Whether Applicant proves that she is having independent interest in suit properties, therefore, decree is not binding on her rights?”

24. It is once again held that Decree Holder and Ramesh have not denied the rights of two brothers Sampat and Bhaskar in the suit property. This shows that, the decree passed in Appeal is for and on behalf of all heirs of Vishwanath. The third party applicant steps in the shoes of one of the co-sharer amongst decree holders, therefore, she has no right to oppose execution of decree. It is further held that being heir of deceased Vishwanath, Bhaskar has 1/4th share, she therefore, can claim 1/4th share from the decree holder after execution of the decree. It is held that, applicant's share cannot be separated from the other co-sharers and she has no independent share in the suit property. The admission of the Decree Holder is recorded that, they being four brothers admittedly, each of them are entitled to 1/4th share. The subsequent purchaser would get their share accordingly.

25. In view of the factual and legal position, the order passed by the Joint Civil Judge, Senior Division, Sangamner, suffers from error, in so much as, the Executing Court has totally ignored the findings recorded in the judgment that, the suit itself was in representative capacity on behalf of all the other family members, therefore, the decree of possession is also for and on behalf of all the family members. The application for possession has also been filed on behalf of all the joint family members hence the Executing Court has fell in error by recording a finding that though the possession is claimed by the Plaintiff, since shares are not determined by metes and bounds, therefore, the share of Plaintiff is not capable of being apportioned.

26. Though the decree has been passed by the Appellate Court on 9th October, 1984, the Judgment Debtors have deprived the Petitioner from enjoying the fruits of the decree till date. Though the Petitioner has filed Applications below Exhibits-19, 34 and 63, those were kept pending on one pretext or the other. When finally the order has been passed, it has once again resulted in denial of the rights of the Plaintiff which have been crystallized in 1984. The Plaintiff and his family has been denied their rightful possession for last more than 40 years.

27. The Executing Court has misinterpreted the application for

issuance of possession warrant, as well as the contents of the Execution Petition. The Executing Court has recorded that, upon going through the Decree, it appears that, a joint decree is passed in favour of both the Plaintiffs, in such situation when one of the decree holders has parted with his share and is not alive whether possession warrant can be issued in favour of only one decree holder. Since the shares of other co-holders are not divided by metes and bounds, possession warrant cannot be issued in favour of Plaintiff alone.

28. This observation itself is sufficient to hold that the order impugned suffers from perversity and non application of mind. The Executing Court has not applied its mind to the contents of the judgment, decree and the Execution Petition along with application for issuance of possession warrant, which in no uncertain terms states that the suit was filed for and on behalf of the joint family, the decree of possession is also for all the members of the joint family and the Plaintiff has not prayed for any independent share. Therefore, the order passed below Exhibits-19, 34 and 63 dated 1st April, 2017 deserves to be quashed and set aside.

29. The order impugned is passed on 1st April, 2017, the Apex Court in the report judgment in the case of **“Rahul S. Shah V/s**

Jitendra Kumar Gandhi and Others” (2021) 6 SCC 418, has held that, considering the legal complexities, the large pendency of execution proceedings and large number of instances of abuse of process of execution, the court must play an active role in deciding all such issues and pass clear, unambiguous and executable decree. Having regard to the huge delays and complexities involved in the executions, the Supreme Court has issued few directions to do complete justice, in exercise of its powers under Article 142 read with Articles 141 and 144 of the Constitution of India so as to bring to an end the unnecessary ordeal of litigation, awaiting fruits of decree and resultantly affecting faith of litigants in the process. Directions have been issued in the said judgment to be followed by the Courts mandatorily, which read thus :

“42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

42.3. *After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.*

42.4. *Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.*

42.5. *The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.*

42.6. *In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.*

42.7 *In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.*

42.8. *The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.*

42.9. *The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.*

42.10. *The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.*

42.11. *Under section 60 of CPC the term “...in name of the judgment-debtor or by another person in trust for him or on his behalf” should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.*

42.12. *The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.*

42.13. *The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.*

42.14. *The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.”*

30. Accordingly, the Writ Petition is partly allowed. Order dated 1st April, 2017 passed by learned Civil Judge, Senior Division, Sangamner, below Exhibits-19, 34 and 63 in Regular Darkhast No. 102 of 2010 is quashed and set aside. The Executing Court is directed to pass appropriate order by taking into account the findings recorded in the judgment, about suit being filed by Plaintiff in representative capacity for all the family members and by following the mandatory directions, which have been issued by the Supreme Court in **“Rahul S. Shah V/s Jitendra Kumar Gandhi and Others”** (supra), in order to ensure the execution of the Decree as early as possible, within a period of 6 weeks from the date of appearance of the parties before the Executing Court. Parties are directed to appear before the Executing Court on 25th March, 2025. Rule is made absolute in above terms.

31. After pronouncement of the Judgment, learned Advocate for Respondents No.1B to 1E and 4 requests to grant stay this Judgment for a period of ten weeks. He submits that the Petitioner himself had obtained stay in the present writ petition. In view of the reasons recorded in the judgment and considering that there is already huge delay in executing the decree passed in the year 1984, in order to facilitate execution of decree as early as possible, I do not find any merit in the request made by

the learned Advocate for the Respondents. The request is, therefore, refused.

**[MANJUSHA DESHPANDE_]
JUDGE**

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