



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.13859 OF 2023**

1. Mujiboddin Hakimoddin,
Age: 40 years, Occ.- Agriculture,
R/o. Jafrabad, Tal. Jafrabad, Dist. Jalna.
2. Ikramoddin Hakimoddin,
Age: 51 years, Occ.- Agriculture,
R/o. Jafrabad, Tal. Jafrabad, Dist. Jalna. ..Petitioners

Versus

Shamshuddin Nijamoddin,
Age: 70 years, Occ- Agriculture,
R/o. Jafrabad, Tal. Jafrabad, Dist. Jalna. ..Respondent

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Mr. Shaikh Mazhar A. Jahagirdar, Advocate for Petitioners.
Mr. R. O. Awasarmol, Advocate for Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 23rd JULY, 2025.

Pronounce On : 29th JULY, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing at admission stage.
2. The petitioners/judgment-debtors impugn order dated 12.09.2023 passed by learned District Judge, Jalna in Regular Civil Appeal No.78/2023, thereby upholding order dated 13.07.2023 passed by learned Civil Judge Junior Division, Jafrabad in Regular Darkhast No.8/2019, by which petitioners/judgment-debtors are directed to deliver vacant possession of suit house to respondent/decreed holder.

3. The respondent had instituted Regular Civil Suit No.143/2008 seeking decree of perpetual injunction against petitioners in respect of house property i.e. Grampanchayat House No.841 (old G. P. House No.993) situated at Jafrabad. The Trial Court decreed suit vide judgment and order dated 29.10.2009 and restrained petitioners from obstructing peaceful possession of respondent over suit house. The decree passed by Trial Court has attained finality.

4. The respondent/decreed holder filed Regular Darkhast No.8/2019 before Civil Judge Junior Division at Jafrabad seeking execution of decree dated 29.10.2009 contending that petitioners in breach of decree of perpetual injunction put articles in suit house and petitioner no.1 has actually started residing in it. The respondent, therefore, sought police aid for restoration of possession, so also prayed for putting petitioners in civil prison and claimed compensatory cost of Rs.2,00,000/-. The Executing Court issued notices to petitioners. They filed their say. According to them, once respondent/decreed holder admitted possession of petitioners, it is expected to file separate suit for recovery of possession. The learned Executing Court then framed points for consideration and recorded evidence of parties. The respondent/decreed holder recorded his evidence on oath and stated that since he was out of station, in the evening of 25.12.2018

petitioners broke lock of suit house and forcefully entered into suit house alongwith household articles. On 01.02.2019, when he came back, petitioners abused him and gave threat to kill him. The petitioner no.1 recorded his evidence. He denied ownership of respondent over Grampanchayat House No.841 i.e. suit property. The learned Executing Court after considering aforesaid evidence directed petitioners to hand over possession of suit house in favour respondent. In Regular Civil Appeal No.78/2023 filed by petitioners before District Court, order as passed by Executing Court is confirmed.

5. Mr. Jahagirdar, learned Advocate appearing for petitioners vehemently submits that decree of perpetual injunction was passed in favour of respondent. However, under garb of execution of such decree he is trying to obtain possession of suit property from petitioners. According to Mr. Jahagirdar, there was no evidence before Executing Court to establish that respondent was in possession of suit property and he has been forcefully dispossessed by petitioners. He would submit that decree as passed by Trial Court was invalid, in absence of proof of partition. According to Mr. Jahagirdar, property in which respondent was residing has been acquired and petitioner no.1 was residing in his property, which is shown as suit property. According to Mr. Jahagirdar, decree of perpetual injunction could have been executed in terms of

Order XXI Rule 32 of Code of Civil Procedure, which prescribes for mode of detention of judgment-debtors or auction sale of his property. However, there cannot be order to deliver vacant possession.

6. Per contra, Mr. Awasarmol, learned Advocate appearing for respondent supports impugned order.

7. Having considered submissions advanced and on perusal of material tendered before this Court, it can be observed that respondent had instituted suit for perpetual injunction against petitioners alleging obstruction to his possession over suit house bearing Grampanchayat No.841 (old G. P. House No.993) admeasuring 30 ft. x 25 ft. situated at village Jafrabad. The description of suit property is given with its four boundaries. The petitioners, who were defendants in that suit caused their appearance and took stand that at the time of partition of properties respondent had relinquished his share in the house property situated at Jafrabad as he was settled in Mumbai and, therefore, their father allotted the same to other brothers excluding petitioners. The Trial Court after considering pleadings and evidence recorded by parties, decreed suit holding plaintiff's possession over suit property. Eventually, petitioners were perpetually restrained from causing any sort of obstruction and interference in possession of plaintiff over suit house. The

aforesaid decree has attained finality. In this background, respondent filed execution proceeding in Regular Darkhast No.8/2019 contending that taking advantage of fact that he was out of station, petitioners forcefully entered in suit house and took possession in breach of injunction order.

8. The Executing Court recorded evidence of parties. The plaintiff and his witnesses narrated that defendants have forcefully took possession of house property. The fact remains that decree of perpetual injunction is passed against petitioners and during subsistence of such decree, petitioners have acquired possession. Although they are trying to contend that they were continuously in possession even prior to institution of suit, such contentions cannot be accepted, since rights of parties were crystallized while passing decree. The petitioners cannot claim their possession over suit property once final decree of prohibitory injunction is passed against them upholding possession of respondent.

9. So far as contention of Mr. Jahagirdar that decree of prohibitory injunction has to be executed in a manner provided under Order XXI Rule 32 of Code of Civil Procedure, there cannot be two views. However, it requires true and correct understanding of interpretation of said provision. Explanation to sub-rule (5) of Rule 32 of Order XXI of Code of Civil Procedure came into force w.e.f. 01.07.2002. Careful reading of aforesaid Explanation would

show that decree of prohibitory injunction can also be enforced by directing recovery of possession where judgment-debtor had disobeyed decree.

10. In case of *Sabitri Khuntia and Others v. Ram Avatar Modi*¹, it has been held that decree for prohibitory injunction can be executed taking recourse to sub-rule (5) of Rule 32 by removing construction raised by judgment-debtor in violation of decree. In yet another judgment delivered by Panjab and Haryana High Court in case of *Kapoor Singh v. Om Prakash*², it has been observed that in the event of violation of a decree for prohibitory injunction by way of dispossession of the decree holder by the judgment-debtors, the executing court has jurisdiction to restore possession in favour of the decree holder, who cannot be compelled to file another suit. In that case, it is clarified that sub-rule (5) of Rule 32 cannot be given narrow interpretation to apply the same only to decree of mandatory injunction and not prohibitory injunction.

11. Single Judge of Orissa High Court in case of *Kuni Mohanty Vs. Upendra Barik and Others*³ while interpreting provision of sub-rule (5) of Rule 32 of Order XXI observed thus :

¹ (2006) (II) CLR-368.

² AIR 2009 PNH 188

³ 2016 AIR CC 2610 (ORI)

“ The answer in my considered view has to be in the affirmative that when a decree for injunction is sought to be executed resorting to the provision of sub-rule (5 of Rule 32 of Order 21 and in the process, a person is threatened with dispossession or is dispossessed, he has a right to complain in accordance with the provision of the rules contained from Rule 97 onwards cannot be shown the door of exit merely on such technical ground that it being not the execution of a decree for possession but a decree for injunction sought to be executed, the claim is not entertainable at all. Such a narrow construction in my considered view will run contrary to the intention of the Legislature in enacting the provision of law, i.e., Order 21, Rule 99 of the Code as also law laid down by the Apex Court in all those cases (supra). Moreover, when the decree for injunction is sought to be enforced by resorting the provision of Order 21, Rule 32 (5) of the Code, the same for the purpose has to be taken to be a decree for possession so far as the third party/claimant is concerned.”

12. In case of ***Meera Chauhan Vs. Harsh Bishnoi***,⁴ the Hon'ble Supreme Court of India observed in paragraph nos. 17, 18 and 19 which reads thus :-

“17. In Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal, while dealing with the power of the Court to pass orders for the ends of justice or to prevent the abuse of the process of the Court, the Hon'ble Supreme Court held that the courts have inherent jurisdiction to issue temporary order of injunction in the circumstances which are not covered under the provisions of Order XXXIX of the Code of Civil Procedure Code.

18. At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

19. It is also well settled that when in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the Court can order restoration of possession to the party wronged.”

13. It can be observed that Civil Court, who has passed decree is also guardian of such decree and in case of breach of directions under decree, Civil Court is not powerless to exercise inherent powers and restore decree holder in the position as he was at the time of granting decree of perpetual injunction. If judgment-debtor breaches such decree and does some acts to frustrate decree, Court can use such powers and take all those necessary steps to guard decree.

14. In that view of the matter, this Court do not find any merit in Writ Petition. Hence, Writ Petition stands rejected.

15. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE