

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 8285 OF 2015

Mr. Jagannath Krishna Narvekar,
Age : 63 years, Occ.: Agriculturist,
Residing at At and Post Mervi,
Taluka and District-Ratnagiri.

...Petitioner

Versus

Shri. Ravindra Tukaram Ambre,
Age : 51 years, Occ.: Agriculturist,
Residing at At and Post Mervi,
Taluka and District-Ratnagiri.

...Respondent

Ms. Anjali N. Helekar i/b Ms. Anu C. Kaladharan, learned Advocate for the Petitioner.

Dr. Uday Warunjikar i/b Mr. Sumit Kate, learned Advocate for the Respondent.

**CORAM : ASHWIN D. BHOBE, J.
[VACATION COURT]**

DATE : 6th JUNE 2025.

JUDGEMENT :

1. Heard Ms. Anjali Helekar, learned Advocate for the Petitioner and Dr. Uday Warunjikar, learned Advocate for the Respondent.
2. Rule. Rule made returnable forthwith and by consent of the parties heard finally.
3. Petitioner (original Defendant/judgment debtor) by the present Petition under Article 227 of the Constitution of India, assails the order dated 9th June 2015 passed by the 2nd Joint Civil

Judge, Ratnagiri (learned Judge) in Execution Application No. 8 of 2014, allowing the Application dated 20th March 2015 at Exhibit-44, filed by the Respondent(original Plaintiff/decreed holder).

Factual Matrix :

4. Respondent instituted Regular Civil Suit No. 69 of 2010 before the Civil Court at Ratnagiri seeking the following reliefs :-

“a. An order be issued directing the Defendant to remove the obstacles he has placed at points A, B and C on the map attached to the Suit, thereby clearing the road leading to the Plaintiff’s non-agricultural suit property immediately.

b. A permanent injunction be issued against the Defendant, preventing him from obstructing or interfering with the Plaintiff’s continued and uninterrupted use of the said road in the future.

c. The cost of the Suit be recovered from the Defendant and awarded to the Plaintiff.”

5. The Regular Civil Suit No. 69 of 2010 was decreed on 17th March 2010. The operative part of the order reads as follows :-

“1. Suit is decreed with costs.

2. Defendant is directed to remove obstruction in approach road shown by Plaintiff in the map alongwith Suit within one month from date of this order.

3. Defendant, his agent, any one for him or on his behalf is hereby restrain from causing obstruction to Plaintiff’s right of way shown in map alongwith Suit.”

6. Petitioner unsuccessfully challenged the decree dated 17th March 2010 before the District Court in Civil Appeal No. 62 of 2012 and thereafter in Second Appeal No. 539 of 2013, which was dismissed on 6th February 2014.

7. On 13th March 2014, Respondent filed Execution Application No. 8 of 2014, seeking execution of the decree passed in Regular Suit No. 69 of 2010. Said proceedings were contested by the Petitioner.

8. Respondent filed an Application dated 20th March 2015 at Exhibit-44 in the Execution Application No. 8 of 2014, seeking removal of the obstruction. Petitioner filed reply dated 31st March 2015 opposing the application at Exhibit-44.

9. Vide impugned order, the learned Judge has allowed the Application at Exhibit-44 by issuing the following directions :-

“1. Application partly allowed.

2. J.D. to give road of 10 fts. Width to D.H. as per hand map marked in red color specified as ‘A’ ‘C’ to have access upon suit property.

3. J.D. to give 11 fts. Width road to D.H. at the turns appearing on this road for free passage of Truck.

4. J.D. to comply with the order till or before 10-7-2025 and to bear all of its expenses.

5. D.H. is at liberty to seek justifiable steps for effective execution of this order.

6. Both parties to comply with this order.

7. No order as to cost.”

10. Voicing in favour of the grounds urged in the petition, Ms.

Anjali Helekar, learned Advocate for the Petitioner submits that neither the Plaint nor the evidence makes a reference to the measurement of the approach road or to the measurements of the obstructions to the approach road, which is shown in the map prepared. She submits that the judgment dated 17th March 2012 records that the Petitioner after selling the approach road shown in the map, had given a fresh road to the Respondent, as shown in the map in colour 'red'. She submits that in the Execution Application, the Respondent has prayed that the construction made by the Petitioner in the approach road be removed as per the decree. She submits that the Respondent has demolished a construction and had made available a road of 4 feet to the Respondent and a *pursis* dated 31st July 2014 to that effect is filed. She submits that though the decree did not mention the width of the road, it is the Petitioner who had given a road having a width of 4 feet. She submits that the Executing Court, has travelled beyond the decree and given a road of width of 10 feet and 11 feet to the Respondent, which was a relief that was neither prayed by the Respondent, nor granted in the decree. She lastly submits that since the decree was for removal of obstruction, the question of deciding 'measurement of roads' could not arise before the Executing Court. She therefore submits that the Executing Court having travelled beyond the decree, the Writ Petition be allowed and the order impugned, be quashed and set aside.

11. Naysaying the above submissions, Dr. Uday Warunjikar, learned Advocate submits that the Respondent despite having a decree passed in his favour as on 17th March 2012, is denied of the fruits of the said decree. He submits that the reading of the decree

passed in Regular Civil Suit No. 69 of 2010, would indicate that the Respondent has been secured by way of an unobstructed access. He submits that the access, which was the subject matter of the suit is not only referred to in the plaint but has been identified in the map, which forms a part of decree. He submits that the contentions of the Petitioner with regards to the road/access, its measurement, its width apart from being frivolous are mischievous. He places reliance on Paragraph 3 of the plaint, wherein there is a specific reference to a Non-Agricultural permission dated 15th March 1989 granted to the Petitioner, which is sufficient to indicate the existence of the road in question. It is the contention of Dr. Uday Warunjikar, that while applying for N.A. permission, the Petitioner has shown an access road to the N.A. plot. He submits that the order dated 9th June 2015 merely executes the decree dated 17th March 2012. He submits that the *pursis* dated 31st July 2014, relied by the Petitioner, itself is an indication of the Petitioner acting contrary to the decree passed against the Petitioner. He submits that the Petitioner has failed to show any perversity or illegality in the impugned order to seek indulgence of this Court in its extra-ordinary jurisdiction. He submits that the Petitioner has been successful in denying the benefits of decree from the year 2012. He submits that the petition is an abuse of process of law and therefore prays that the petition be dismissed with exemplary cost.

12. I have perused the records placed before me with the assistance of learned Advocates.

13. Subject matter of the petition pertains to execution of the

decree dated 17th March 2012 passed in Regular Civil Suit No. 69 of 2010, which decree has attained finality on 6th February 2014. Execution proceedings were initiated in the 2014. The Hon'ble Supreme Court in the case of *Greisheim GmbH v/s. Goyal M.G. Cases (P) Limited*¹ in Paragraph 2 has observed as under :-

“2. It is an old saying that the difficulties of the litigant in India begin when he has obtained a decree. The evil was noticed as far back in 1872 by the Privy Council in relation to the difficulties faced by the decree-holder in execution of the decree [General Manager, Raj Durbhunga v. Coomar Ramaput Sing, 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605 : 20 ER 912] , Moo IO p. 612. After more than a century, there has been no improvement and still the decree-holder faces the same problem what was being faced in the past. A litigant coming to court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he primarily wants from the court of justice is the relief and if it is a money decree, he wants that money what he is entitled for in terms of the decree, must be satisfied by the judgment debtor at the earliest possible without fail keeping in view the reasonable restrictions/rights which are available to the judgment debtor under the provisions of the statute or the code, as the case may be.” (emphasis supplied)

14. The Regular Civil Suit No. 69 of 2010 was decreed on 17th March 2012 with the direction to the Petitioner to remove the obstruction on the approach road and further restraining the Petitioner from causing obstruction to the Respondent's right of way. Said decree makes a reference to a map in which the road is shown. Perusal of the decree would indicate that there is clarity

¹ 2022(11) SCC 549.

with regards to the road and its identity in the context of the map, which forms a part of the decree.

15. Ms. Anjali Helekar, learned Advocate made an attempt to persuade this Court that there is no clarity with regards to the dimensions of the said road. Dr. Uday Warunjikar, learned Advocate by relying on Paragraph 3 of the Plaint, wherein reference is found to the N.A. permission, the plans prepared at the instance of Petitioner and the map, submitted that it is not open for the Petitioner to raise such contentions.

16. Referring to the 20 of the impugned order, which contain the reasons for issuing the directions in the context of the said road and for maintaining the width of road, Ms. Anjali Helekar, submits that the said conclusion of the learned Judge amounts to traveling beyond the decree. According to her, if the decree does not give the dimensions of the road, it is not open to the Executing Court to travel beyond the decree.

17. The principle of the Executing Court cannot go behind the decree is well established. However, the question in the instant case is whether the learned judge has travelled beyond the decree or has construed the decree?

18. As seen from the decree, reference to the road is on the basis of the map, which forms a part of the decree. Ms. Anjali Helekar, does not dispute the road being referred to in the said map. She also does not dispute the N.A. permission referred in the judgment and decree dated 17th March 2012. Thus, even if the contention of Ms. Anjali Helekar is considered, then it would be a case where the

decree can be said to be ambiguous. In such a case, it would be the duty of the Executing Court to construe the decree for the limited purpose and to take a call in the matter.

19. The Hon'ble Supreme Court in the case of *Sanwarlal Agrawal and Others v/s. Ashok Kumar Kothari and Others*² referring to its earlier decision, has in Paragraph 21 observed as follows :-

“21. With respect to Rajinder Kumar v. Kuldeep Singh [Rajinder Kumar v. Kuldeep Singh, (2014) 15 SCC 529 : (2015) 4 SCC (Civ) 243], the counsel has placed reliance on the following paragraph : (SCC p. 544, para 21)

21. If the suit for specific performance is not decreed as prayed for, then alone the question of any reference to the alternative relief would arise. Therefore, there is no question of any ambiguity. As held by this Court in Topanmal Chhotamal v. Kundomal Gangaram [Topanmal Chhotamal v. Kundomal Gangaram, AIR 1960 SC 388, p. 390, para 4:“4. At the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing court to construe the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the court would certainly be entitled to look into the pleadings and the judgment....”] and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while

² (2023)7 SCC 307.

executing a decree for specific performance, the court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties. Thus, there is no question of any alternate relief regarding the damages, etc. in the present case since the suit for the specific performance for the conveyance of the property has been decreed.”

This elucidation of the law is unexceptionable. It is undeniable that an executing court can construe a decree if it is ambiguous.....”

20. Pleadings of Regular Civil Suit No. 69 of 2010, reveal the entire dispute revolved around the access road (shown in the map appended to the plaint) leading from the main road to the non-agricultural plot of the Respondent and the obstruction caused on it. By the impugned order, the learned Judge has precisely undertaken the said exercise of construing the decree, so as to give effect to the decree and ensure the same does not result in a paper-decree. I am unable to accept the contention of Ms. Anjali Helekar that the Executing Court has travelled beyond the decree passed in Regular Civil Suit No. 69 of 2010. Dr. Uday Warunjikar would be right in his submission that the conduct of the Petitioner is aimed to frustrate the decree passed in favour of the Respondent.

21. For the above said reasons, I do not find any perversity in the impugned order. Petition is without any merits.

22. Rule discharged. Interim order stands vacated.

23. Before concluding, I deem it proper to make reference to

Paragraph 42.12 of the decision of the Hon'ble Supreme Court in the case of *Rahul S. Shah v/s. Jinendra Kumar Gandhi & Ors.*³, which reads as under :-

“42.12. The executing court must dispose of the execution proceedings within six months from the date of filling, which may be extended only by recording reasons in writing for such delay.”

24. Civil Writ Petition No. 8285 of 2015 is dismissed. There shall be no order as to costs.

[ASHWIN D. BHOBE, J.]

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³ 2021(6) SCC 418.