

Shabnoor

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

WRIT PETITION NO. 4330 of 2022

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Ganpati Mahadev Purekar (Deceased)

Through LRs.

... Petitioner

V/s.

Dagadu Mahadev Purekar (Deceased)

Through LRs.

... Respondent

Mr. Manoj A Patil for petitioner.

Mr. Chetan G. Patil for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 24, 2025

P.C.:

1. The petitioner/deed-holder is the plaintiff who filed a suit for declaration and an injunction. The Appellate Court, by its judgment and decree dated 6th February 2016, declared that plaintiff No.5 has the right of pre-emption in respect of the suit property. Additionally, the Appellate Court restrained defendant Nos.1 and 2 from alienating, transferring, or creating third-party rights in relation to the suit property. The decree granted by the Appellate Court, being specific in its terms, signifies that any act by the defendants in contravention of the decree would constitute a violation of the rights conferred upon the plaintiff.

2. While executing the decree, the plaintiff filed an application seeking permission to deposit an amount of Rs.3,25,000/- before

the Executing Court, arguing that such a deposit is necessary to give effect to the declaratory decree and to exercise the right of pre-emption. The Executing Court, however, rejected the application by the impugned order, holding that the act of alienating, transferring, or creating third-party rights was beyond the term of the decree. The Executing Court further observed that clause (4) of the decree merely recognized the petitioner's right and characterized it as a declaratory decree. However, the petitioner contends that the deposit of the specified amount is integral to effectuating the right conferred under the decree and ensuring compliance with the judgment of the Appellate Court.

3. Mr. Manoj Patil, learned Advocate for the petitioner, relied on the judgments in *Swastik Builders vs. Dr. Shobha*, reported in 2021 (4) Mh.L.J., *Western Coalfields Limited and Others vs. K. Subba Rao*, reported in 2022 DGLS (Bom.) 4885, and *Dhurandhar Prasad Singh vs. Jai Prakash University*, reported in 2001 SCC (6) 534. He contended that considering the nature of the declaratory decree, the Executing Court has the power to ensure its proper implementation. He submitted that clause (4) of the decree is not merely declaratory but creates an actionable right in favor of the petitioner, which is capable of enforcement by the Executing Court. According to him, the petitioner's request to deposit the specified amount aligns with the principle that the Executing Court must ensure that the decree passed by the Appellate Court is effectuated in its true letter and spirit. He further argued that the declaratory decree, when coupled with consequential relief, grants enforceable rights, and the role of the Executing Court is not merely to

interpret but also to give effect to the decree, as held in the above-cited judgments.

4. Per contra, Mr. Chetan Patil, learned Advocate for respondent No.3, relied on the judgments in *State of M.P. vs. Mangilal Sharma*, reported in (1998) 2 SCC 510, and *Firm Rajasthan Udyog & Others vs. Hindustan Engineering And Industries Limited*, reported in (2020) 6 SCC 660. He submitted that clause (4) of the decree, being merely declaratory in nature, does not confer any enforceable right upon the petitioner. He argued that the decree does not provide for any specific consequential relief that could be enforced by the Executing Court. Relying on the principles laid down in the above judgments, he contended that declaratory decrees, unless accompanied by consequential relief, cannot be executed. He further submitted that permitting the deposit of the specified amount would amount to modifying or enlarging the scope of the decree, which is impermissible under the law.

5. The primary issue for consideration, therefore, is whether clause (4) of the decree, while declaratory in its form, creates an actionable and enforceable right in favor of the petitioner, and whether the Executing Court is empowered to permit the deposit of the specified amount to give effect to such a decree. It is well-settled law that an Executing Court cannot go behind the decree or enlarge its scope beyond what has been granted by the adjudicating court. However, it is equally established that the Executing Court must ensure that the decree is implemented effectively and in accordance with its terms, as held in *Swastik Builders* and *Dhurandhar Prasad Singh*.

6. On perusal of the operative part of the judgment and decree dated 6th February 2016, it is evident that clause (4) of the decree declares that petitioner No.5 – Ganpati Mahadev Purekar has been conferred a right of pre-emption in respect of the suit property. The right of pre-emption, as recognized under Section 22 of the Hindu Succession Act, 1956, applies to cases involving the transfer of immovable property among heirs. However, on an overall reading of the operative part of the decree and the reasons assigned in the judgment, it is apparent that the Appellate Court, while recognizing the petitioner's pre-emption right under Section 22, has not granted further consequential relief, such as mandatory directions for execution of the transfer or specific enforcement of the right. A decree that solely recognizes a legal right without accompanying relief is categorized as a declaratory decree under Section 34 of the Specific Relief Act, 1963.

7. In the absence of consequential relief or specific directives for enforcement, such a decree cannot ordinarily be executed, as held in *Firm Rajasthan Udyog (Supra)* and *Mangilal Sharma (Supra)*. These precedents emphasize that the Executing Court cannot go beyond the scope of the declaratory decree to create rights or impose obligations not explicitly provided for in the decree. Therefore, in light of these principles, the Trial Court did not commit any jurisdictional error in refusing the petitioner's application seeking permission to deposit an amount, as such permission would fall outside the purview of the decree's execution.

8. Furthermore, it is pertinent to note that Section 36 of the Code of Civil Procedure, 1908, which governs the execution of decrees, provides that a decree must be executed in accordance with its terms. Declaratory decrees under Section 34 of the Specific Relief Act, 1963, are enforceable only if coupled with consequential relief. The petitioner's reliance on his pre-emption right, while validly recognized, does not translate into an enforceable obligation on the part of the defendants in the absence of a direction to execute a transfer or perform any related act. Therefore, the Trial Court's order refusing permission to deposit the amount is consistent with the statutory framework and binding precedents.

9. In view of the above discussion, there is no merit in the present petition. Accordingly, the writ petition stands dismissed.

(AMIT BORKAR, J.)