

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.8899 OF 2018  
WITH  
INTERIM APPLICATION NO.11234 OF 2025  
IN  
WRIT PETITION (STAMP) NO.8899 OF 2018

Ashoka Education Society  
through its authorised signatory  
Ashok Motilal Kataria

*...Applicant/Petitioner*

V/s.

Pundlik Chimaji Vidhate deceased  
through his legal heirs-  
1a) Smt. Chandrabhaga Pundlik Vidhate  
and Ors.

*...Respondent*

WITH  
WRIT PETITION NO.7383 OF 2017  
WITH  
INTERIM APPLICATION NO.11236 OF 2025  
IN  
WRIT PETITION NO.7383 OF 2017

Ashoka Education Society  
through its authorised signatory  
Ashok Motilal Kataria

*...Applicant/Petitioner*

V/s.

Pundlik Chimaji Vidhate deceased  
through his legal heirs-  
1a) Smt. Chandrabhaga Pundlik Vidhate  
and Ors.

*...Respondent*

WRIT PETITION NO.13388 OF 2016  
WITH  
INTERIM APPLICATION NO.11237 OF 2025

**IN  
WRIT PETITION NO.13388 OF 2016**

Ashoka Education Society  
through its authorised signatory  
Ashok Motilal Kataria

*...Petitioner/Applicant*

V/s.

Pundlik Chimaji Vidhate deceased  
through his legal heirs-  
1a) Smt. Chandrabhaga Pundlik Vidhate  
and Ors.

*...Respondent*

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**Mr. Nitin Gaware Patil** with Mr. Sriraj Menon with Mr. Shubham Hundia, Mr. Sandesh Panchal i/b. M/s. Satyaki Law Associates for the Applicant/Petitioner in all the Petitions.

**Mr. R.D. Soni** with Mr. V.R. Kasle for Respondent Nos.(1a) to (1c ).

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**CORAM: SANDEEP V. MARNE, J.**

**DATED: 7 OCTOBER 2025.**

**ORAL JUDGMENT:**

1) The Petitioner has filed the present Petitions essentially seeking to redress its grievance where the land sold to him by the heirs of Pundlik Chimaji Vidhate admeasuring 75 Ares is sought to be taken back in part (24 Ares) towards execution of decree passed in Regular Civil Suit No.416 of 1989, which was instituted by Pundlik Chimaji Vidhate. The challenges in each of the three Petitions are as under:

- (i) Writ Petition No.13388 of 2016 challenges order dated 11 November 2016 rejecting Petitioner's application at Exhibit-46

filed for seeking rejection of execution proceedings on account of purchase of suit property by the Petitioner.

- (ii) Writ Petition No.7387 of 2017 is filed challenging order dated 2 May 2017 passed by the executing court rejecting application at Exhibit-131 filed by the Petitioner seeking rejection of execution proceedings on account of decree being rendered ineffective.
- (iii) Writ Petition (stamp) No.8899 of 2018 is filed challenging order dated 17 February 2018 rejecting the application filed by the Petitioner at Exhibit-142 seeking appointment of Deputy Superintendent of Land Records (**DSL**R) as Court Commissioner for taking actual measurement of properties and allowing the application at Exhibit-124 filed by decree holders for issuance of possession warrant.

2) Pundlik Chimaji Vidhate (**Pundlik**) and Haribhau Chimaji Vidhate (**Haribhau**) were brothers. They had instituted a partition Suit, which came to be decided thereby allotting respective shares of lands in favour of Pundlik and Haribhau. It appears that amongst various other lands, the land bearing Survey No.46/1 admeasuring 2 Hectare 80 Ares came to the share of Haribhau whereas the land being Survey No.46/2/1 admeasuring 1 Hectare 88 Ares came to the share of Pundlik. It appears that out of the said land admeasuring 1 Hectare 88 Ares in Survey No.46/2/1 coming to the share of Pundlik, portion admeasuring 75 Ares was towards south side of the canal and adjoining Haribhau's land bearing Survey No.46/1. Pundlik complained that Haribhau was disturbing his possession of portion of 75 Ares land out of land admeasuring 1 Hectare 88 Ares in Survey No.46/2/1. He accordingly instituted R.C.S. No.416 of 1989 in the Court of Civil Judge, Senior

Division, Nashik seeking injunction against Haribhau from obstructing his possession of portion of land admeasuring 75 Ares. The description of suit property in R.C.S. No.416 of 1989 would indicate that the same was restricted to only land admeasuring 75 Ares and towards northern side of which, the following boundaries were shown:-

उत्तरेस : कॅनॉल रस्ता आणि कॅनॉल व त्यापलीकडे पुंडलिक चिमाजी विधाते यांच्या ताब्यातील स.नं. ४३ पैकी असलेले क्षेत्र.

Thus, in the Suit filed by Pundlik, he described the suit property admeasuring 75 Ares to have a canal on northern side with balance portion of Pundlik's land beyond the canal.

3) During pendency of R.C.S. No.416 of 1989, Pundlik complained that Haribhau, apart from obstructing possession of the suit property of 75 Ares, also committed encroachment in respect of land admeasuring 24 Ares out of the suit property. He accordingly amended the Plaint and incorporated following prayer in paragraph 13A[A]:-

१३ अ [अ ] प्र.वादीच्या मालकीच्या ७ एकर मिळकत क्षेत्रापेक्षा प्र . वादीने वादीच्या २४ आर क्षेत्रात अतिक्रमण केलेले आहे ते अतिक्रमण दूर करून वादीला त्या क्षेत्राचा कब्जा प्र.वादीकडून देण्यात यावा.

4) Pundlik's Suit came to be decreed by the Trial Court by judgment and decree dated 3 September 2002 directing Haribhau to deliver possession of 24 Ares land out of his Survey No.46/1 to the Plaintiff. Haribhau was also restrained from causing any obstruction to peaceful enjoyment and possession of Pundlik's land over Survey No.46/2/1. Thus, the decree directed Haribhau to carve out land admeasuring 24 Ares from his own land bearing survey No.46/1 and hand it over to Pundlik. The decree has attained finality on account of dismissal of all appeals preferred against the same.

5) By Sale Deed dated 26 October 2005 heirs of Haribhau sold entire land admeasuring 2 Hectare 80 Ares in Survey No.46/1 in favour of the Petitioner. The description of the land sold by heirs of Haribhau to Petitioner vide Sale Deed dated 26 October 2005 is as under:-

तुकडी जिल्हा नाशिक पोट तुकडी तालुका नाशिक पैकी नाशिक महानगरपालिका हद्दीबाहेरील परंतु नाशिक अर्बन अँग्लोमरेशन हद्दी बाहेरील मौजे गंगापूर या गावचे शिवारातील स्थावर मिळकत यांसी सर्व्हे नंबर ४६/१ याचे क्षेत्र लावणी लायक २ हेक्टर ७० आर अधिक पोट खराब १० आर मिळून एकूण क्षेत्र २ हेक्टर ८० आर यांसी आकार रुपये ९.२० पैसे या मिळकतीस चतुःसीमा :

पूर्वेस : १५ मी. रुंदीचा रस्ता

पश्चिमेस : स.नं . १८ मी. रुंदीचा रस्ता व नाला

उत्तरेस : श्री पुंडलिक चिमाजी विधाते यांचा हिस्सा व काही भागात कॅनॉल

दक्षिणेस : लागू सर्व्हे नंबर ४७

येणेप्रमाणे मिळकत तदंगभूत वास्तूसह जमिनीमध्ये असलेल्या स्वतंत्र विहिरींसह त्यावर असलेले इले. कनेक्शनसह मिळकत दरोवस्त.

6) Shortly thereafter, the heirs of Pundlik also executed Sale Deed dated 17 December 2005 in favour of the Petitioner thereby selling land admeasuring 75 Ares out of land admeasuring 1 Hectare 88 Ares from Survey No.46/2/1. The description of the land sold by heirs of Pundlik vide Sale Deed dated 17 December 2005 is as under:-

तुकडी जिल्हा नाशिक पोट तुकडी तालुका नाशिक पैकी नाशिक महानगरपालिका हद्दीतील परंतु नाशिक अर्बन अँग्लोमरेशन हद्दी बाहेरील मौजे गंगापूर या गावचे शिवारातील स्थावर मिळकत यांसी सर्व्हे नंबर ४६/२/१ हि शेतजमीन यांसी क्षेत्र १ हे ७१ आर + पो. ख . ० हे १७ आर असे एकूण क्षेत्र १ हे ८८ आर पैकी ० हे ७५ आर (सदर क्षेत्रापैकी रास्ता बाधित होणारे अंदाजे क्षेत्र ० हे १० आर व ० ते ६५ आर) हि शेतजमीन मिळकत यांसी चतुःसीमा खालीलप्रमाणे :

पूर्वेस : रस्ता

पश्चिमेस : स.नं . ४६/१ पैकी भाग

उत्तरेस : कॅनॉल व रस्ता  
दक्षिणेस : स.नं. ४६/१ पैकी भाग

7) Careful perusal of the two Sale Deeds would indicate that while describing land admeasuring 75 Ares in the Sale Deed executed by heirs of Pundlik, canal and road are reflected towards the northern side whereas land of Haribhau bearing survey No.46/1 is reflected on the southern side. Similarly, in the Sale Deed executed by heirs of Haribhau, land of Pundlik bearing Survey No.46/2/1 is indicated on the northern side. Based on the two Sale Deeds dated 26 October 2005 and 17 December 2005, Petitioner believes that he has purchased both the lands of Haribhau and Pundlik in respect of part of which R.C.S. No.416 of 1989 was filed. Petitioner therefore believes that the *lis* between Pundlik and Haribhau came to an end as the same person purchased their respective lands.

8) Contrary to the belief of the Petitioner, and shortly after executing the Sale Deed dated 17 December 2005, heirs of Pundlik filed Regular Darkhast No.68 of 2006 for execution of decree dated 3 September 2002 passed in R.C.S. No.416 of 1989. Curiously, the Regular Darkhast is filed after selling 75 Ares land in favour of the Petitioner when R.C.S. No.416 of 1989 was also filed in respect of the land admeasuring 75 Ares.

9) Heirs of Pundlik impleaded Petitioner as Judgment Debtor No.2 on account of Petitioner purchasing the land of Haribhau. The conduct of heirs of Pundlik in seeking to execute decree passed in R.C.S. No.416 of 1989 even after selling of land admeasuring 75 Ares to Petitioner prompted Petitioner to file application at Exhibit-46 seeking rejection of execution proceedings. The application is rejected by the Trial

Court by order dated 11 November 2016, which is impugned in Writ Petition No.13388 of 2016. The Executing Court held that there was no cogent material before it to show that Petitioner has purchased the land for which R.C.S. No.416 of 1989 is filed. This finding is recorded by presuming that the Petitioner himself had suggested measurement of land for the purpose of identification of parties. However, the application at Exhibit-46 did not contain any prayer for measurement of land of parties.

10) As heirs of Pundlik continued pressing execution proceedings, Petitioner filed application at Exhibit-131 once again seeking rejection of execution proceedings on the ground that the same was rendered infructuous as the decree was in-executable on account of purchase of both the properties of Pundlik and Haribhau by the Petitioner. This application also met the fate of rejection by order dated 2 May 2017, which is the subject matter of challenge in Writ Petition No.7383 of 2017.

11) Since the Executing Court was refusing to believe that what is purchased by Petitioner from legal heirs of Pundlik is the suit property involved in R.C.S. No.416 of 1989, he made a final attempt by filing application at Exhibit-142 seeking appointment of DSLR as Court Commissioner to conduct measurements. Petitioner believed that conduct of such measurements would assist the court in deciding whether the land purchased by Petitioner is indeed the suit property in R.C.S. No.416 of 1989. However, even the application at Exhibit-142 is rejected by the Executing Court by order dated 17 February 2018. By the said order the Executing Court has also allowed separate application at Exhibit-124 filed by heirs of Pundlik and has directed issuance of possession warrant and

its execution for handing over possession of 24 Ares of land in favour of heirs of Pundlik.

12) I have heard Mr. Gaware-Patil, the learned counsel appearing for the Petitioner in all the three Petitions and Mr. Soni, the learned counsel appearing for Respondent Nos.1a to 1c, who are some of the Decree Holders and heirs of Pundlik.

13) The main contest between the parties is about the exact location of land which was subject matter of R.C.S. No.416 of 1989 and the one which is purchased by the Petitioner vide Sale Deed dated 17 December 2005. Petitioner believes that he has purchased the entire land admeasuring 75 Ares from heirs of Pundlik, which forms suit property of R.C.S. No.416 of 1989. On the other hand, it is the contention of heirs of Pundlik that what is sold by Sale Deed dated 17 December 2005 is something other than suit property involved in R.C.S. No.416 of 1989. *Prima facie* there is room to believe that both the pieces of lands are the same. This *prima facie* inference can be drawn from boundaries indicated in the Suit as well as the two Sale Deeds dated 17 December 2005 and 26 October 2005. In the Suit while describing the suit property of 75 Ares existence of canal and balance land of Pundlik is reflected towards northern side. In the Sale Deed executed by heirs of Pundlik on 17 December 2005, description of 75 Ares land includes existence of canal on the northern side. Even in the Sale Deed executed by heirs of Haribhau on 26 October 2005 land of Pundlik and some portion of canal is reflected on the northern side. Another factor for assuming *prima facie* possibility of Petitioner purchasing the land forming suit property in RCS No. 416 of 1989 is the timing of filing of execution proceedings by the heirs of Pundlik. The Suit was decreed on 3 September 2002 and the heirs of Pundlik did not file the execution proceedings within reasonable time

thereafter. They first sold land admeasuring 75 Ares (which area corresponds to the area of suit property) vide Sale Deed dated 17 December 2005. After encashing 75 Ares of land, the heirs of Pundlik have filed execution proceedings for recovery of 24 Ares land from Haribhau and Petitioner.

14) Also, though the decree dated 3 September 2002 envisages Haribhau to deliver possession of 24 Ares land out of his Survey No.46/1 to the Plaintiff, the decree cannot obviously travel beyond the description of suit property. The suit property described in the Complaint filed in RCS No. 416 of 1989 was as under:

1] All the piece and parcels of Survey No.46, total area 6 Hectare 40R, Assessment Rs.22.10, out of which area to the extent of 0H.75R, bounded by-

Towards East-Road and Survey No.45,

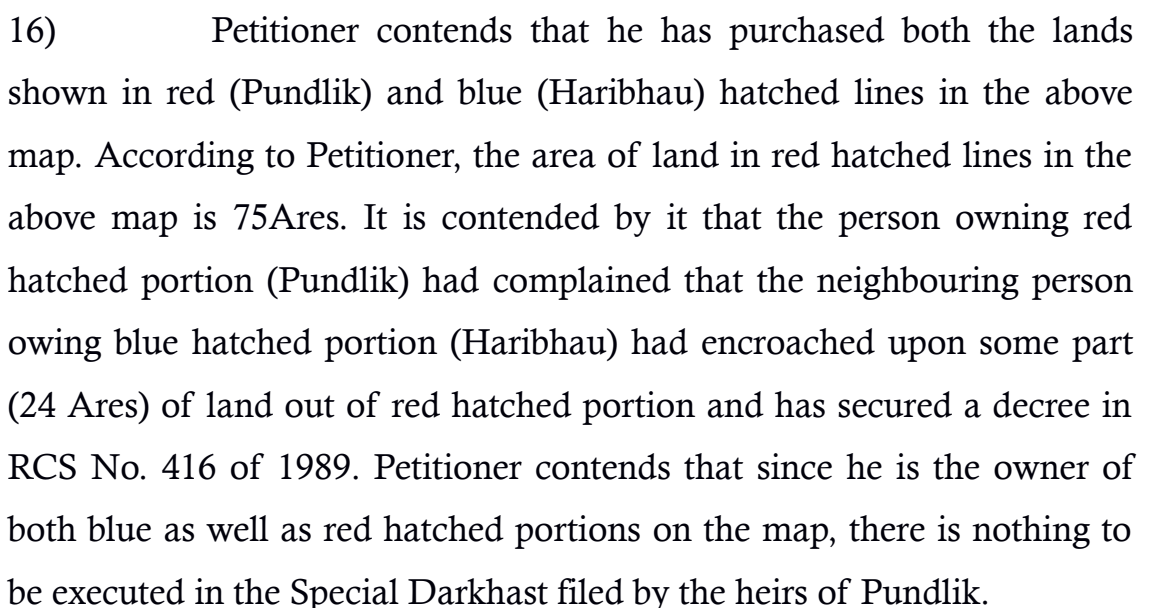
Towards West- Portion of 7 Acres land given to Defendant Haribhau Vidhate as per compromise took place in Special Execution Petition No.72 of 1983 and Surve Nos.59 & 62.

Towards South- Portion of 7 Acres land given to defendant Haribhau Vidhate as per compromise took place in Special Execution Petition No.72 of 1983 and Survey No.47.

Towards North-Canal Road and the portion owned by Mr. Pundlik Chimaji Vidhate out of Survey No.43.

The amended prayer for removal of encroachment by the Defendant (in excess of his own land admeasuring 7 Acres, equivalent to 2 Hectare 80 Ares) was from the suit property admeasuring 75 Ares from Survey No, 46/2/1.

15) For better understanding of the position of lands bearing Survey No.46/2/1 (Pundlik) and Survey No.46/1 (Haribhau), it would be apposite to refer to measurement map dated 6 January 2025 prepared by City Survey Office, Nashik. The same is as under:-



17) Thus, there can be no dispute to the position that if Petitioner demonstrates before the Executing Court that he has purchased entire 75 Ares land, which was suit property in R.C.S. No.416 of 1989, the Darkhast proceedings will have to be necessarily dismissed. The key to the problem thus is to identify the exact land which formed suit property in RCS No. 416 of 1989 and the exact land purchased by Petitioner from heirs of Pundlik. The Executing Court ought to have conducted this exercise of finding out whether the Petitioner has purchased land forming suit property in R.C.S. No.416 of 1989 or not. It appears that Petitioner made repeated attempts to urge before the Executing Court to undertake the said exercise. While rejecting application at Exhibit-46, the Executing Court did refer to Petitioner's request for measurement of lands of all parties for identification purpose. Instead of accepting the said suggestion, the Court used the same for recording a finding against Petitioner that there was no material to show that Petitioner has purchased the land, which was subject matter of R.C.S. No.416 of 1989. Petitioner was thereafter required to file application at Exhibit-142 for appointment of DSLR as Court Commissioner for carrying out measurements. Even that application is erroneously rejected by the Executing Court by order dated 17 February 2018.

18) In my view, the Executing Court has completely misdirected itself in not conducting an enquiry as to whether land admeasuring 75 Ares purchased by the Petitioner from heirs of Pundlik vide Sale Deed dated 17 December 2005 could be land forming suit property in R.C.S. No.416 of 1989. For the purpose of resolution of dispute of identification of lands, it would be appropriate that measurements be carried out for finding out location of the following lands:-

- (i) Land admeasuring 75 Ares forming suit property in R.C.S. No.416 of 1989.
- (ii) Land purchased by Petitioner from heirs of Pundlik vide Sale Deed dated 17 December 2005.

19) If upon conduct of aforesaid measurements, it is found that Petitioner has purchased land admeasuring 75 Ares, which was indeed subject matter of R.C.S. No.416 of 1989, the execution proceedings will have to be necessarily dismissed as Petitioner would then be owner of land of Haribhau as well as land of Pundlik, which was suit property in R.C.S. No.416 of 1989. Therefore, even if it is assumed that Haribhau had encroached upon Pundlik's land, since Petitioner is the owner of lands of Haribhau and Pundlik, there is no question of execution of decree. If land purchased by Petitioner is found to be the suit property, the heirs of Pundlik would also not have *locus* to seek execution of decree passed in R.C.S. No.416 of 1989. If on the other hand, the Executing Court notices that the land purchased by Petitioner vide Sale Deed dated 17 December 2005 is different than the suit property, the Court can continue with the execution proceedings.

20) Considering the above position, I proceed to pass the following order:-

- (i) Order dated 17 February 2018 passed by the Executing Court on applications at Exhibits-142 and 124 is set aside.
- (ii) The DSLR, Nashik shall depute an appropriate officer for conduct of measurement of lands as indicated in paragraph 18 above and submit measurement report and

map before the Executing Court within a period of two months. Petitioner shall bear the expenditure for such measurements.

(iii) The Executing Court shall proceed to decide Regular Darkhast No.68 of 2006 by taking into consideration the measurement map and report submitted by the office of DSLR, Nashik.

(iv) In the event the Executing Court arrives at a conclusion that land purchased by Petitioner vide Sale Deed dated 17 December 2005 executed by heirs of Pundlik was the suit property in R.C.S. No.416 of 1989, it shall proceed to dismiss Regular Darkhast No.68 of 2006. If on the other hand, the land purchased by Petitioner vide Sale Deed dated 17 December 2005 from heirs of Pundlik is found to be not the same in respect of which R.C.S. No.416 of 1989 was filed, the Executing Court shall proceed to pass an appropriate orders in the execution proceedings.

(v) In view of the issuance of the above directions, it is not necessary to set aside order dated 11 November 2016 passed on application at Exhibit-46 and order dated 2 May 2017 passed on application at Exhibit-131.

(vi) It is clarified that the observations made in the order are *prima facie* and the Court hearing Suit No.1582 of 2012 shall decide the same without being influenced by any of the observations made in the order.

21) With the above directions, the Writ Petitions stand **disposed of**. All Interim Applications also stand disposed of.

**[SANDEEP V. MARNE, J.]**