



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

WRIT PETITION NO.2256 OF 2025

Maya Kisan Somai and Ors. ... Petitioners
versus
Anupama Jamnu Hiranandani and Ors. ... Respondents

Mr. Surel Shah, Sr. Advocate with Mr. Anand Patil, for Petitioners.
Mr. Hemant P. Ghadigaonkar, for Respondent Nos.1, 4, 5a to 5c and 6.
Mr. Avinash B Avhad with Mr. Mahesh V. Rawool, Mr. Ghule Sahil Satyavan,
for Respondent Nos.3a and 3b.

CORAM: N.J.JAMADAR, J.

DATE : 18 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to the order passed by the executing Court on 10 May 2024, whereby the Court Commissioner was appointed to sell / transfer the suit property and, in aid of the said action, do all necessary things including get the vacant possession of the suit property; the order dated 5 December 2024 whereby the application preferred by the Petitioners to set aside earlier order came to be rejected, and the order dated 24 January 2025 whereby the Bailiff was authorized to break open the lock and take forcible possession of the suit property.
3. Mr.Shah, learned Senior Advocate for the Petitioners, submits that in pursuance of the said order passed in execution of the decree for partition

and separate possession of house property, the Petitioners have been dispossessed and the Court Commissioner has taken possession of the suit property. Mr. Shah submitted that the orders impugned in this Petition are in flagrant violation of the provisions contained in the Code of Civil Procedure, 1908. The Court has not followed the procedure of determining the reserve price of the suit property, inviting bids and selling the suit property to the highest bidder. Even if the decree for partition was to be executed by the sale of the suit property, the executing Court has committed grave error in law by empowering the Court Commissioner with unbridled power to sell property, the execute instrument and even dispossess the Petitioners.

4. Mr. Shah further submitted that to show bonafide, the Petitioners were willing to deposit in the Court the value of 1/7th share of the decree holder. Therefore, the possession of the Petitioners be restored, during the pendency of this Petition.

5. Mr. Avhad, learned Counsel for the Respondents, resisted the Petition. It was submitted that the Court Commissioner has acted pursuant to the orders passed by the executing Court. The Court Commissioner has already taken possession of the suit property. If the prayer for restoration of the possession is considered, at this stage, the Respondents would suffer an irreparable loss. At best, the Petitioners can be put in possession as the agents of the Court Commissioner. It was further submitted that the said

prayer for putting the Petitioners back in possession does not form part of the Petition, nor any ground has been raised in the Petition.

6. I have perused the judgment and order passed by the learned District Judge in Misc. Civil Appeal No.134 of 2016. The learned District Judge has ordered that, in the event the suit house cannot to be partitioned by meets and bounds, the suit house be sold and the sale proceeds be distributed. The provisions contained in the Partition Act, 1893 come into play. Even otherwise, for executing the decree by sale of suit house and distribution of the sale proceeds, it was necessary for the executing Court to ascertain the value of the suit house, determine the reserve price and have the process of bidding to obtain the optimum price. All the persons entitled to a moiety in the suit house, ought to have been provided a right to participate in the bid. Instead, the executing Court seems to have empowered the Court commissioner to sell the suit house without ascertaining the valuation of the suit house and determining reserve price, and also take possession of the suit property. The Petitioners have been, in the process, dispossessed.

7. It is, therefore, necessary to issue notice to the Respondents and hear the Petition with regard to the legality, propriety and correctness of the orders passed by the executing Court. Since the Petitioners were in possession of the suit house and an affidavit has been filed on behalf of the Petitioners undertaking to deposit a sum of Rs.4,80,00,000/- in the executing Court, and

in any event, the process of sale of the suit house will take time, it may be appropriate to direct that the Petitioners be put in possession of the suit house, subject to making deposit of Rs.4,80,00,000/- in the executing Court, within a period of four weeks.

8. Issue notice to the Respondents, returnable on 11 March 2025.

9. Mr. Ghadigaonkar, learned Counsel, waives service on behalf of Respondent Nos.1, 4, 5a to 5c and 6 and Mr. Avhad waives service on behalf of Respondent Nos.3A to 3B.

10. By way of ad-interim order, further proceedings in the Execution Petition stand stayed.

11. The Petitioners be put in possession of the suit house subject to the undertaking to be filed before this Court that the Petitioners would vacate the suit property in the event, the instant Petition is decided against the Petitioners, and the Petitioners will deposit an amount of Rs.4,80,00,000/- before the executing Court within a period of four weeks from today.

12. Such undertaking be filed within one week of uploading of this order.

13. In the event, the said amount of Rs.4,80,00,000/- is not deposited before the executing Court, within the said period of four weeks, this order shall stand vacated.

14. The Respondents are at liberty to file affidavit in reply within a period of two weeks.

Stand over to 11 March 2025.

(N.J.JAMADAR, J.)