

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4041 OF 2025

Vitthal Kalyanrao Choundgundi and Anr. ...Petitioners
vs.
Subhangi Rajendra Gurav ...Respondent
Mr. Bajrang Solunke a/w. Ms. Vishakha Shelar, for the Petitioners.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 26, 2025

P.C:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 4th March, 2025 passed by the learned Civil Judge, Pune whereby the possession warrant was ordered to be issued to deliver the peaceful possession of the suit property including additional construction, if any.
3. The contention of the petitioners-judgment-debtors was that though the constructed portion, over the suit property admeasuring 2000 sq.ft., in respect of which the decree for specific performance came to be passed and the sale deed has been executed, is shown 975 sq.ft., yet, the actual construction over the suit property is 1375.98 sq.ft. Therefore, the decree for possession of additional constructed portion cannot be executed.
4. Suffice to note, the decree of specific performance passed by

the trial Court in SCS No. 519 of 2010 on 31st October, 2012 has attained finality upto the Supreme Court.

5. I have perused the copy of the agreement for sale in which the area is shown to 975 sq.ft. The said area corresponds with the description of the suit property in the plaint. It seems that on the basis of a certificate of an Architect appointed by the petitioners, it was claimed that the constructed portion is 1375.98 sq.ft. Evidently, it was an endeavour to cling on to the property by the proverbial last straw. The decree for specific performance of contract has attained finality upto the Supreme Court. The Sale Deed has already been executed.

6. Thus, the objection now raised on behalf of the petitioners-judgment debtor, for the first time, was rightly rejected by the learned Civil Judge.

7. In any event, the executing Court has directed that the petitioners-judgment debtor may claim additional amount if it is found that the constructed portion is more than 975 sq.ft. Therefore, subject to the right of the petitioners to enforce the claim for additional construction, if found, the order for delivery of possession of the suit property deserves to be executed. The Executing Court may direct the officers who execute the decree to measure the constructed portion over the suit property so as to

ascertain the exact area of the constructed portion, of which possession is delivered to the decree holder.

8. With the aforesaid clarification, the petition stands disposed.

(N. J. JAMADAR, J.)