



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 402 of 2025

(1) Jagmohan s/o Manoharlal Khandelwal
Aged about 65 yrs. Occ. Business

(2) Smt. Shobharani w/o Jaagmohan Khandelwal,
aged about 60 yrs. Household

Both R/o Kelibag Road, Mahal, Nagpur.

.... Petitioners

// Versus //

(1) Ramesh s/o Shardaprasad Gupta
Aged 32 yrs. Occ. Nil

(2) Smt. Sarladevi Rajendra Gupta
Aged 80 yrs. Occ. Household,

(3) Nikhil Rajendra Gupta

All (1) to (3) r/o Kelibag Road, Mahal, Nagpur.

.... Respondents

Mr. S. C. Mehadia, Advocate with Mr. A. S. Mehadia, Advocate for the
petitioners

Mr. V. S. Dhobe, Advocate for the respondents

CORAM : ANIL L. PANSARE J.

DATED : 24-04-2025

P. C.

Heard.

2. The petitioners – decree holders are waiting fruits of decree for last ten years. In fact the original plaintiff was deprived from enjoying the fruits of the decree because of delay. He expired after passing decree. The decree reads as under :-

- “1. Suit of the plaintiff is decreed.*
- 2. Defendants to execute the sale deed in respect of one flat on the first floor; and one shop on the ground floor in favour of plaintiffs within 30 days from the date of this order.*
- 3. In case of variance in the measurement, plaintiffs to pay extra consideration amount towards extra spaces, being availed as per sanction plan, as per market rate within 30 days from the date of this order.*
- 4. Plaintiffs to deposit Rs. 11,30,000/- in the court within 30 days from the date of this order.*
- 5. Plaintiffs to bear the costs of registration of sale deed.*
- 6. Parties to bear their own costs.”*

3. As could be seen, the trial Court directed the respondents – judgment debtors to execute sale deed in respect of one flat on the first floor and the one shop on the ground floor in favour of the petitioners – plaintiffs within 30 days. The said order has been passed on 17-9-2008 and till date, the respondents have not honoured the same for one or other reason.

4. Be that as it may, the petitioners approached executing court with draft sale deed, by filing application, Exhibit 44, with a request to approve the sale deed and execute the same through Court. The executing court rejected the same on the ground that property mentioned in the draft sale deed is not consistent with the property mentioned in the decree. The order, however, does not disclose as to which part of the scheduled property is not consistent with the decree.

5. Accordingly, I have gone through the judgment and decree passed by the trial Court. In paragraph no. 1, it refers to the agreement saying that respondents agreed to sell one shop block on ground floor admeasuring 211.72 sq.ft., facing West on Kelibag Road, Mahal, Nagpur along with residential flat on first floor admeasuring 864.25 sq.ft. along with balcony for total consideration of Rs. 16,00,000/-. Accordingly, the trial Court framed issue whether the petitioner-plaintiff proved that there was an agreement for sale between plaintiff and defendant for total consideration of

Rs. 16,00,000/- in respect of suit property. The issue has been answered in affirmative.

6. Thus, one can gather from the judgment that the suit property consists of shop block on ground floor admeasuring 211.72 sq.ft., facing West on Kelibag Road, Mahal, Nagpur along with residential flat on first floor admeasuring 864.25 sq.ft. along with the balcony. The decree will have to be understood in the light of what the parties have agreed in the contract, the specific performance of which has been granted by the trial Court in favour of the petitioners. In that sense, when in the decree, the trial Court has directed respondents – judgment debtors to execute sale deed in respect of one flat on first floor and one shop on ground floor, it relate to suit property as described in the plaint.

7. So far as the description of property in draft sale deed is concerned, the petitioners while putting measurement of shop viz. 211.72 sq.ft. added words ‘built up area’ and similar such addition is against measurement of the flat. In addition, the petitioners have incorporated total measurement of the plot beneath the building.

8. Thus, there is minor discrepancy in the schedule of property referred to in the draft sale deed.

9. At this stage, learned counsel for the petitioners submits that the petitioners are ready to furnish fresh draft sale deed which will be in consonance with the description referred to in the plaint and judgment. The proposal appears to me to be reasonable. However, considering the long standing wait of the petitioners to get fruits of the decree, I deem it necessary to put forth the schedule of property which shall be incorporated in the draft sale deed. The schedule of property as spelt out in plaint reads as under.

“The House bearing Corporation No. 55, Ward No. 26, Circle No. 6, City Survey No. 460, Sheet No. 205, Kelibagh Road, Mahal, Nagpur, having total admeasuring area 176.70 Sq.Mtrs. and out of aforesaid

house, the newly constructed portion of the shop block having admeasuring area 211.72 Sq.Ft. on ground floor and 865.625 Sq.ft. Flat on first floor and bounded as under :-

Towards East	-	Portion of house and thereafter house of Madhukar Deshkar
Towards North	-	Lane and thereafter house of Shakuntala Gupta
Towards South	-	Road
Towards West	-	Land and thereafter house of Deorao Muley, facing West.”

10. At this stage, learned counsel for the respondents submits that in absence of dimensions or sketch map of the property in dispute, the only remedy available to the petitioners is to file a suit afresh on merits because the decree cannot be executed for want of dimensions. In support, he has relied upon the judgment of the Supreme Court in the case of ***Ramesh Vs. Harbans Nagpal and ors. [2016(2) Civil LJ 1]***.

11. I have gone through the judgment. In the said case, there was no dimension or sketch map of the property in dispute either in the plaint or in the decree nor was there any material to ascertain dimensions of the disputed property. In such circumstances, the Supreme Court held that the decree may not be executable and accordingly, set aside the decree with directions to the plaintiff to take appropriate steps as available in law including decision afresh in the suit filed before the trial Court.

12. The judgment will be of no assistance to the respondents. The Supreme Court opined that decree is not executable because the property was not identifiable through the plaint or through the decree or by any other means. Thus, moot question was whether the property is identifiable. In that context, the Supreme Court observed that neither were there dimensions nor was there sketch map to identify the property. In the present case, however, the details of the property finds place in the schedule attached to the plaint

which has been reproduced herein above. The property is, thus, clearly identifiable. Most importantly, it is nobody's case that for want of identification of property, either party could not lead evidence properly. In the circumstances, the trial Court itself ought to have passed decree with description of the property. Nonetheless, there is sufficient material to identify the property and thus, the decree is executable. The argument put forth by the respondents is, thus, without any substance and stands rejected.

13. The writ petition is, accordingly, allowed. Order dated 6-12-2024 passed below Exhibit 44 in Spl. Dar. No. 110/2015 by 18th Joint Civil Judge Senior Division, Nagpur is quashed and set aside. The petitioners – decree holders shall approach the executing court for appropriate relief in terms of above. The draft sale deed so submitted shall be considered by the executing court in terms of decree passed and what has been stated in the body of the order.

14. Writ petition is disposed of in above terms. No order as to costs.

(Anil L. Pansare, J.)

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