

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1469 OF 2024

Munnalal S/o Surajlal Gupta

Vs.

Bhaskar S/o Hiranman Titre and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.R. Johrapurkar, Advocate for petitioner
Shri Mohammad Ateeque, Advocate for respondent No. 1

CORAM : SMT M.S. JAWALKAR, J.

DATE : 21.04.2025

Heard learned Counsel for the petitioner and learned Counsel for respondent. Perused impugned order dated 18/09/2023. The decree holder has filed execution proceeding for the execution of the arbitration award dated 04/02/2017 in Arbitration Case No. 3/2015. As per the award, the Nazir of this Court executed a sale deed of 86.422 sq.mtrs of land out of plot No. 7, Mouza Bhamti, Nagpur. The said deed was registered on 20/04/2021, before the Sub Registrar, Nagpur. The decree holder moved an application at Exh.28 for issuance of the possession warrant for taking him in possession of the suit property. It appears that arbitration award is silent on possession. The sister of the judgment debtor has filed the application Exh.35, objecting the execution of the award. Both these applications came to be decided by learned District Judge - 6, vide order dated 18/09/2023. The objection raised by the sister of the judgment debtor that her grandfather Shripat Bajirao Titare died

intestate on 16/03/2019 and therefore, she is having share in the plot No. 7.

2. It is settled position of law that in view of Section 47 of the Code of Civil Procedure (for short 'the CPC), the Executing Court to adjudicate the *interse* claims of the decree holder and the third party in the execution proceeding itself to avoid prolongation of litigation by drawing parties to file independent suit.

3. The objections raised by the sister of the judgment debtor is rejected on the ground that she failed to demonstrate how the learned Arbitrator committed legal misconduct or how the award dated 04/02/2017, is vitiated by fraud or collusion. Vague submission that the decree holder and the judgment debtor obtained the award by misrepresentation is not sufficient to hold that award dated 04/02/2017, is illegal. The sister of the judgment debtor has not challenged rejection of her application Exh.35. Moreover, her grandfather bequeathed the property in favour of Bhaskar and Prabhakar grandsons of Shripat Titare by registered Will Deed. Therefore, there is no question of grandfather dying intestate as alleged by sister.

4. It is the contention of the petitioner that by the registered sale deed, half of the property i.e. open plot was sold by the respondent and it was consented by his brother. Whereas, contention of the respondent is that only half share was sold and the property was not partitioned in any way.

5. The learned Counsel for respondent also submitted that he has raised objection recently on 15/03/2025, which is marked as Exh.52. The learned District Judge- 6, Nagpur, erroneously recorded finding that the issue of possession can be decided in execution also. However, considering the objectors share in the plot in question which is not partitioned by metes and bounds was sold. The decree holder cannot claimed possession of a specific portion in that plot. It is admitted fact that there was no challenge by the respondent to the award of arbitrator. However, he has filed some objections at belated stage after a period of around one and half years.

6. Learned Counsel for respondent relied on *Sudam Nana Awari and another Vs. Madhav Baburao Titame and others, AIR Online 2020 Bom 86*, wherein, this Court held that in terms of the provision of Section 47 of the CPC all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree are required to be determined by the Court Executing the decree and not by a separate suit. He also placed reliance on *Sardar Hasanbhai Attar Vs. Usman Papamiya Attar Shaikh and others, 2008(1) Mh.L.J.340*, wherein, this Court observed in paragraph No. 13 as under :

“13. Therefore, considering the scheme of the above provisions and the decisions of the Supreme Court, the appellant being a person who has right in the immovable property in question is entitled to be

heard in the matter on merit. The rejection of this application by the trial Court without giving any opportunity and further by the appellate Court by confirming the said application on the ground of not being in possession of the property in question while moving the application for resistance or obstruction is incorrect and unsustainable. It is wrong to observe that a person who is not in possession cannot obstruct or resist the delivery of possession of immovable property in the execution application filed by the decree holder."

7. Learned Counsel Shri Joharapurkar, for petitioner relied on *Manickam alias Thandapani and another Vs. Vasantha, 2022 SCC OnLine SC 2096*, wherein, Hon'ble Apex Court held in paragraph No. 30 as under :

"30. The defendant in terms of the agreement is bound to handover possession of the land agreed to be sold. The expression "at any stage of proceeding" is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. This Court in Babu Lal has explained the circumstances where relief of possession may be necessary such as in a suit for partition or in a case of separate possession where the property conveyed is a joint property. In the suit for specific performance, the possession is inherent in such suit, therefore, we find that the decree-holders are in fact entitled to possession in pursuance of the sale deed executed in their favor."

8. It appears from the record that consenter has specifically stated that share of Bhaskar Titre, who is owner and having possession over the said open plot and he is selling the portion of joint ownership plot, this clause if considered along with award of arbitrator, sale deed executed

by the Nazir, wherein, description of property is specific. The learned District Judge ought to have issued possession warrant by allowing Exh. 28. However, it would be appropriate, if objection raised by respondent would be decided first keeping in mind that the said award is not challenged by the respondent. Hence, I proceed to pass following order :

ORDER

- i) Writ petition is allowed.
- ii) The impugned order passed by the learned District Judge - 6, dated 18/09/2023, in Regular Darkhast No. 752/2017, to the extent of Exh.28, is hereby quashed and set aside.
- iii) Exhibit No. 28 is allowed. The learned District Judge - 6, Nagpur, to issue possession warrant.
- iv) Learned District Judge - 6, shall decide the objections filed by present respondent within a period of one month from the date of appearance, on its own merit.
- v) The execution of possession warrant is hereby stayed for four weeks, by that time, the learned District Judge - 6 shall decide the objections raised by the respondent.

Accordingly, petition stands disposed of.

(SMT M.S. JAWALKAR, J.)