



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

WRIT PETITION NO. 2589 OF 2024

1] Sanjay S/o. Prabhakar Tute, Aged
about 54 years, Occupation - Labour

2] Vijay S/o. Prabhakar Tute, Aged about
49 years, Occupation - Labour

Both R/o. Niyojeet, Vasant Vihar,
Gruha Nirman Sahakari Sansthan
Maryadit, Gaimukh Nagar, Pusad,
Tah. Pusad, District - Yavatmal.

3] Sau. Anjali Dattyaopant Kadwe,
Aged about: 45 years, Occu:
Household, R/o. Kale Fail, District:
Washim.

....PETITIONERS

....VERSUS....

1] Sanjay S/o. Golaji Jadhav, Aged about
49 years, Occupation - Agriculturist &
Business, R/o. Mouza: Pimpalkhuta,
Tah.: Pusad, District - Yavatmal.

2] Ashok S/o. Govindrao Suryawanshi
Aged about 47 years, Occupation -
Mechanic, R/o. Itwari, Pusad, Tah.
Pusad, District - Yavatmal.

....RESPONDENTS

Shri P.S.Chawhan, Advocate for petitioners.
Shri Abhijeet Khare, Advocate for respondent no. 1.

CORAM : SMT. M.S. JAWALKAR, J.

RESERVED ON : 03/04/2025

PRONOUNCED ON : 08/04/2025

JUDGMENT

Heard learned counsel for the petitioners and learned counsel for the respondent.

2] The present petition is filed challenging the order passed by learned Civil Judge, Senior Division, Pusad, District Yavatmal below Exh. 36 preferred by the present petitioners and Exh. 39 preferred by the respondent no. 1 obstructionist.

3] The petitioners entered into an agreement of sale of the property on 12/12/2008. The respondent no. 2/plaintiff paid an amount of Rs. 1,70,000/-. The respondent no. 2/plaintiff preferred the suit bearing Special Civil Suit No. 39/2010 before the learned Civil Judge, Senior Division, Pusad for specific performance of contract and permanent injunction against the petitioners. The learned Civil Judge, Senior Division, Pusad partly decreed the suit on 03/12/2015 and held that, the plaintiff is entitled to decree for specific

performance of contract to the extent of undivided shares of the petitioners. The petitioners preferred the appeal bearing R.C.A. No. 1/2006 before learned Ad-hoc District Judge-1, Pusad wherein the learned Ad-hoc District Judge-1 directed the petitioners to refund the amount of Rs. 2,00,000/- to the respondent no. 2/plaintiff within a period of two months, upon which the plaintiff shall handover the possession of the suit property to the petitioners.

4] The plaintiff preferred the Second Appeal bearing No. 387/2018 before this Court challenging the order dated 20/06/2018 passed by the learned Ad-hoc District Judge-1, Pusad. The said Second Appeal is also came to be dismissed. The judgment in Second Appeal No. 387/2018 came to be challenged before the Hon'ble Apex Court in Special Leave Petition (C) No. 8821/2022. Vide order dated 17/05/2022, the Hon'ble Apex Court pleased to dismiss the Special Leave Petition. The respondent no. 2/plaintiff again resorted to this Court by filing Review Application bearing No. 879/2023 in Second Appeal No. 387/2018. This Court vide order dated

11/09/2023 even dismissed the aforesaid Review Application preferred by the plaintiff.

5] The petitioners being the Decree Holder, filed an application under Order 21 Rule 97 of the Code of Civil Procedure, 1908 before the learned Civil Judge, Senior Division, Pusad bearing Regular Darkhast (RD) No. 19/2022 for delivery of possession with the help of police aid. The respondent no. 1 i.e. obstructionist preferred an application on the same date i.e. on 12/10/2023 seeking permission to raise objections to the execution proceedings filed by the petitioners in RD No. 19/2022. The learned Civil Judge, Senior Division, Pusad in its Common Order had partly allowed the application Exh. 36 and also allowed the application Exh. 39 preferred by the respondent no. 1/obstructionist and proceeded to frame the issues, directing the parties to lead the evidence on the issues.

6] The learned counsel for the petitioners relied on *Veljiben V. Satra V/s. Kanaiyalal Purshottamdas Shah and ors.* reported in *2017(1) Mh.L.J. 335.*

7] As against this, the learned counsel for the respondent no. 1 submitted that, the order passed is perfectly justified and there is no interference called for. The learned Trial Court has duly appreciated the decisions relied on.

8] The learned counsel for the respondent no. 1 relied on *Bramhadeo Chaudhary V/s. Rishikesh Prasad Jaiswal and anr.* reported in (1997) 3 SCC 694. On the very same judgment, the learned Trial Court passed his judgment.

9] I have heard both the parties. Perused the documents and impugned order placed on record and citations relied on by the parties.

10] The respondent no. 1 filed application below Exh. 39 in Special R.D. No. 19/2022 on 12/10/2023 contending therein that, the suit shop is given on a rental basis on 27/05/2021 by the non-applicant no. 4 (respondent no. 2 herein) to the applicant (respondent no. 1 herein) and therefore, prayed for permission to file objections. The reply to the application was filed by the present petitioners and

contended that, the respondent no. 1 has no any right to raise any objection under Order 21, Rule 97 of C.P.C. The said provision is for decree holder. The decree holder has also filed application under Order 21, Rules 35, 97 & 98(2) so also Section 151 of C.P.C. for removing the obstructions of respondent no. 1 with the help of police.

11] In this matter, the dates are very material. The learned Civil Judge, Sr. Dn., Pusad passed an order on 03/12/2015 in Special Civil Suit No. 39/2010 in favour of the non-applicant no. 4 (respondent no. 2 herein). The petitioners herein carried out Civil Appeal No. 1/2016 and the said appeal came to be allowed on 20/06/2018. As per this order, the petitioners deposited the amount of Rs. 2,00,000/- for decree on 20/08/2018 for judgment debtor in the Court. The judgment debtor filed Second Appeal No. 387/2018. The said appeal came to be dismissed on 29/04/2022. The judgment debtor thereafter filed the Special Leave Petition (C) No. 8821/2022 before the Hon'ble Apex Court. The Hon'ble Apex Court declined to interfere in the matter and dismissed the

Special Leave Petition on 17/05/2022. Thereafter, the judgment debtor filed a Review Application before this Court vide No. 879/2023 which also came to be dismissed on 11/09/2023.

12] The learned counsel for the petitioners relied on *Veljiben V. Satra* (supra) wherein this Court observed in para 17 as under:-

"17. It, therefore, follows that, when the appellants are claiming possession over the suit land on the basis of the tenancy created during pendency of the Suit, then such tenancy or possession being hit by the principle of lis pendens, under section 52 of the Transfer of Property Act, they have no right at all to resist execution of the decree. The law on this aspect is no more res integra and no authority is required to state the legal position that an obstructionist can successfully resist execution of the decree only if he is able to establish his independent right, title over the property. In this case, on their own pleadings and evidence, the appellants have miserably failed to do so, as they are claiming through the Judgment-Debtor."

13] On perusal of Order 21, Rule 97 of C.P.C., it reveals that, under this provision, the respondent no. 1 is not entitled to file any application.

14] As such, the tenancy created during pendency of the suit or proceedings, such tenancy or possession being hit

by the principle of *lis pendens*. Under section 52 of the Transfer of Property Act, they have no right at all to resist execution of the decree and obstructionist can successfully resist execution of the decree only if he is able to establish his independent right, title towards the property. In this case, on perusal of the application filed by the respondent no. 1 itself established that, he is claiming through the judgment debtor, then it follows that the decree in respect of the suit property, the decree is bound on the person claiming through the judgment debtor. If such fraudulent transfer allowed to be made, the decree holder would never be entitled to enjoy the fruits of the property. So far as *Bramhadeo Chaudhary* (supra) is concerned, the citation relied on by both the parties.

15] The learned counsel for the petitioners drawn my attention to the Order 21 Rule 98(2) of the C.P.C. which reads as under:-

“Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall

direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days."

16] In ***Bramhadeo Chaudhary*** (supra), it is specifically observed that, if the resistance or obstruction found to be unjust and unwarranted, then the same would be removed by the Court. As such, in view of Section 52 of the Transfer of Property Act and in view of Order 21 Rule 98(2) of the C.P.C., the learned Civil Judge, Senior Division, Pusaad ought to have allowed the application filed by the decree holder and ought to have removed the obstruction who has entered into the suit premises.

17] Accordingly, the petition needs to be allowed. As such, the petition is **allowed**.

18] The order dated 27/10/2023 passed below Exh. 36 and 39 passed by the learned Civil Judge, Senior Division, Pusaad, District Yavatmal in Regular Darkhast No. 19/2022 is hereby quashed and set aside.

19] The learned Civil Judge, Senior Division, Pusad is hereby directed to take fresh decision on application at Exh. 36.

Accordingly, the petition stands **disposed of**.

(Smt. M.S.Jawalkar, J.)

B.T.Khapekar