



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

WRIT PETITION No.4580 OF 2024

(Baban s/o. Ghanuji Gawai Vs. Saraswatabai Ratanlal Agrawal (dead), through her legal heirs, Prakahs s/o. Ratanlal Agrawal and others)

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

Court's or Judge's orders.

Mr. Vijaykumar Paliwal, Advocate for petitioner.
Mr. K.R. Bhise, Advocate for respondent Nos.1A to 1C.

CORAM : R.M. JOSHI, J.
DATE : 20th JUNE, 2025.

P.C. :

1. The Judicial system is often criticized by the common people by saying that it is difficult to get a decree and impossible to execute it. This leads to the situation that a successful litigant though gets decree but he couldn't get fruits of the decree and for all practical purposes, it remains a paper decree. Present case is an example to see as to how a execution proceeding can be delayed by judgment debtor by adopting one or the other tactics for years together.

2. By consent of both sides heard finally at the stage of admission.

3. A decree came to be passed on 11.9.2000 in Regular Civil Suit No.64/1983. The decree passed by the trial Court reads thus :

*“The suit is hereby partly decreed
as under ;*

*The defendants except defendant
No.4 Ganpat are hereby directed to hand over*

the 50R land to plaintiff towards eastern side of Survey No.39/1 in north south direction, within 2 months from the date of decree.

If the defendants failed to comply the said order in that event, the plaintiff Saraswattibai would have liberty to take 50R.land out of Survey No.39/1 through the Court and with the costs of the defendants.

Enquiry under order 20 Rule 12 of the Civil Procedure Code, be held for mesne profits from the date of decree till handing over the possession.

The relief against the defendant No.4 Ganpat is hereby rejected.

The Commissioner map vide Ex.-104 would be part and parcel of the decree.

The cost must follow the event.”

4. Admittedly, this decree was challenged by the defendant unsuccessfully and the decree has attained finality.

5. The plaintiff filed execution proceeding being Regular Darkhast No.1/2007. In this proceeding, the judgment debtor has raised numerous objections for years together and has ensured that the decree is not executed. One of such attempt is in the form of challenge to the order passed by the execution Court which is impugned in this petition.

6. During the course of hearing the Taluka Inspector of Land Records (in short, ‘TILR’) was directed to measure the land in question and produce map before the execution Court. Accordingly, on measurement map is placed on record. The petitioner/judgment debtor filed Application Exh.-293 raising dispute about the authenticity of the report of TILR contending that the land identified therein is not in possession of either party and is a drain passing through the area. This application

was opposed by the decree holder contending that the objections are misleading and reference is made to the decree which indicates that the plaintiff is entitled for the possession of 50R land to the plaintiff towards eastern side of Survey No.39/1. The learned execution Court after considering the contentions of both sides rejected the application by holding that there is no infirmity in the map prepared by TILR.

7. Learned counsel for the petitioner submits that the map prepared by TILR indicates that the portion towards eastern side between the land of defendant and plaintiff and, therefore, on the basis of said map decree cannot be executed. It is his submission that the land shown by marking A,B,C,D, on the map belongs to the Government.

8. Learned counsel for the respondent/decreed holder submits that since the decree has attained finality, it is not open for the judgment debtor to raise any objection with regard to the execution thereof in accordance with the decree. According to him, as per the said decree 50R land towards the eastern side Survey No.39/1 is directed to be handed over into the possession of the plaintiff/decreed holder, question of the defendant/judgment debtor raising objection to the report of TILR does not arise and that all issues including one now raised is already dealt with and finally decided by Trial Court.

9. A specific query was made to the learned counsel for the petitioner/judgment debtor as to whether the issue with regard to the entitlement of the plaintiff in respect of said land was agitated before the trial Court. He drew attention of this Court to the decree which indicates that such issue was raised

and was rejected by the trial Court. Once the said issue was raised and rejected by the trial Court and such decree has attained finality, it would not be open for the judgment debtor to raise the same issue before the execution Court and to seek reopening of the decree, which has attained finality. It was also beyond the jurisdiction of the execution Court to go behind decree. Perusal of the decree as indicated above shows that 50 R land towards eastern side of Survey No.39/1 (belonging to judgment debtor) is directed to be handed over. The TILR map clearly shows boundry of Survey No.39/1/ and there is no dispute made by judgment debtor about this position. As per decree the land from Survey No.39/1 admeasuring 50R is directed to be given in possession of the plaintiff. All these facts show that there is no substance in the objection raised by petitioner/judgment debtor to the map. The objection seems to be with only intention to any how/by hook or crook to retain the possession of suit land which is directed to be handedover into the possession of plaintiff/decreed holder.

10. All the aforestated facts clearly indicate that this is an attempt on the part of judgment debtor to somehow obstruct the execution of the decree which is not permissible. Perusal of the impugned order indicates that no fault can be found with the measurement carried out by TILR. As such it is not open for the judgment debtor to take any exception thereto. His objection in the facts of the case are nothing but an attempt of avoiding and delaying the execution of the decree by raising unmeritted objections.

11. In such circumstances, petition has no merits and deserves rejection.
12. The execution proceeding is pending since the year 2007 and it seems that on one or the other pretext the judgment debtor has succeeded in delaying the said execution, to retain the possession of land and obviously delayed it for years.
13. In the peculiar circumstances, the costs is quantified @ Rs.25,000/-. It be paid by petitioner/judgment debtor to decree holder within period of four weeks.
14. Petition stands dismissed in above terms.

(R.M. JOSHI, J.)