



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6121/2024

Shri Rajendra s/o Rameshwar Dalvi,
Aged about 50 years, Occ. Agriculturist,
Resident of Kalkhed, Tahsil- Shegaon,
District Buldhana (Maharashtra State)

... PETITIONER

...VERSUS...

1. Smt. Satyabhama w/o Madhukar Kogde,
Aged about 50 years, Occ. Housewife,
resident of Nibandhe Plots, Chhoti Umari,
Akola, Tahsil and District Akola
(Maharashtra State)
2. Shri Ashok s/o Lalchand Jain,
Aged about 55 years, Occu. Service,
resident of Shegaon, Tahsil Shegaon,
District Buldhana (Maharashtra State)

...RESPONDENTS

Ms Ayushi Dangre, Advocate h/f Shri Mir Nagman Ali, Advocate for petitioner
Shri A.R. Deshpande, Advocate for respondent No.1

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

DATE OF RESERVING THE JUDGMENT : 06/01/2025

DATE OF PRONOUNCING THE JUDGMENT: 14/01/2025

JUDGMENT

Heard learned Counsel for petitioner and learned

Counsel for respondent No.1.

2. The present petition is filed challenging the order dated 31.08.2024 passed on an application dated 10.01.2023 under Order 21 Rule 99 of the Code of Civil Procedure, 1908 (in short 'C.P.C.') for determination of objection of objector and for rejection of execution proceedings at Exhibit 87.

3. The brief facts can be summarized that on 02.05.1987, the judgment, order and decree was passed by the learned Joint Civil Judge Junior Division, Khamgaon in Regular Civil Suit No.14/1985, Supada s/o Mahipat Gurav Vs. Ashok Lalchand Jain, whereby the suit filed by Supada for specific performance of contract was decreed and respondent No.1 was directed to execute the legal and valid sale-deed in respect of the suit field in favour of Supada within three months from the date of decree. The respondent No.2 had already given possession of two acres of land out of three acres in part performance of contract at the time of agreement of sell and he was also directed to deliver the possession of the remaining land of 1 acre to Supada.

4. It is contention of the petitioner that an agreement to sell/possession receipt was executed by respondent No.2 on 15.02.1995, through his General Power of Attorney holder namely Shri Lalchand Kisanlal Jain, for valuable consideration of Rs.4,500/-. It is further contention that the petitioner was put into actual physical possession of the said plot since 15.02.1995 and, therefore, the petitioner was in lawful occupation and possession of said plot. He is regularly paying the taxes to the Grampanchayat. The petitioner sent legal notice on 01.08.2014 calling upon plaintiff Supada Mahipat Gurav not to obstruct in any manner into the lawful occupation and possession of the petitioner over the said plot and construction standing thereon. It was also informed that on 15.02.1995, agreement to sell/possession receipt came to be executed in favour of the petitioner.

5. It is not disputed that on 16.08.2014, a reply to the notice was sent by Supda to the petitioner. On 04.01.2023, plaintiff/respondent No.1 had filed an application under Order 21 Rule 35 of the C.P.C., for issuing warrant of possession. There was application filed by respondent No.1 under Order 21 Rule 99 of the

C.P.C. for determination of objection of objector and for rejection of execution proceedings. It is alleged that the construction standing on the said plot is not covered with the aforesaid judgment, order and decree dated 23.04.1987 and, therefore, it is in lawful occupation and possession of petitioner.

6. In reply to the facts and submission, the learned Counsel for respondents drawn my attention to Annexure-1 of the petition, which is alleged agreement to sell and possession receipt. This is not a sale-deed nor any right transferred in favour of the petitioner. Moreover, from this document, it reveals that it was well informed to the petitioner that there is legal proceedings going on in respect of the said field and after decision of the legal proceedings, sale-deed will be executed. As such, decree was passed in 1987 in favour of respondent and this agreement is executed on 15.02.1995. In spite of decree in favour of plaintiff since 1987, he is deprived to enjoy the fruits of decree. In spite of knowledge in the year 1995, suit for perpetual injunction was filed. The objection came to be filed on 10.01.2023.

7. The learned Counsel for respondents also drawn my attention to the reply filed to the legal notice in the year 2014. From the said reply, it reveals that the petitioner was duly intimated about the pending execution proceedings. It was also informed that in view of Section 52 of the Transfer of Property Act, there cannot be any dealing with the suit property and even if, it is done, the decree is binding on purchaser. As such, it also revealed that the knowledge about the pending litigation was duly there to the petitioner at the time of execution of alleged agreement to sale and also in 2014, when reply received to the notice from the Counsel for respondents.

8. The only point raised by the learned Counsel for the petitioner that while passing the order, the learned Lower Court relied on deleted provision of the C.P.C. that is Order 21 Rule 102. I have gone through the order passed on an application under Order 21, Rule 99 of the C.P.C. True it is that Rule 102 of the C.P.C. came to be deleted on 01.10.1983, which was referred by the learned Civil, Judge Junior Division. It is not going to affect the order passed by the Trial Court. In paragraph No.6 of the judgment, it is

specifically mentioned of Section 52 of the Transfer of Property Act, it is very clear that the rights of one of the parties to the proceeding pending before the court cannot be prejudiced or taken away or adversely affected by the action of the other party to the same proceeding. In the absence of such restriction, one party to the proceeding just to prejudice the other party, may dispose off the properties which is the subject matter of the litigation or put any third party in possession and keep away from the court. By such actions of the party to the litigation the other party will be put to more hardship and only to avoid such prejudicial acts by a party to the litigation these provisions are in existence. When in spite of such statutory restrictions, for the transfer of the properties, which are the subject matter of litigation by a party to the proceeding, the courts are duty bound to give effect to the provisions of the statute.

In fact, having considered the documents placed on record, it can be seen that the petitioner was having knowledge about the pending litigation since 1995, the property is transfer during the pendency of such litigation therefore, he cannot resist execution of decree on any ground.

9. Learned Counsel for respondent also drawn my attention that the new ground raised by the petitioner in the present petition, which is not at all raised before any of the lower Court that suit property is different than the property in possession of the petitioner. There is no document establishing ownership nor petitioner placed on record evidence of valid transfer of title from the judgment debtor to himself in spite of several opportunities. There is no substance in the ground raised that there is lack of knowledge regarding the execution proceeding. There is inconsistency in the claim, which suggest that the petitioner is interested only in protracting the litigation. If as per claim of the petitioner in the petition that the suit property is different than the property in possession of the petitioner, then there would not have been any necessity to raise objection in execution.

10. The learned Counsel for respondent drawn my attention to the order passed in earlier petition No.544 of 2020 dated 27.1.2020 which was filed by judgment debtor. The said petition came to be withdrawn. However Court observed in para 4 of the said order as under:

“4. In view of the above, this petition is disposed off as withdrawn. Considering that the execution proceedings are pending for the last 32 years and the LR of the decree holder is on record, the learned 4th Joint Civil Judge, Junior Division, Khamgaon is directed to deal with Regular Darkhast No.3/1998 on day-to-day basis. Adjournment shall be refused and the said proceedings shall be decided within 60 days from today.”

However all efforts are being made to protract the litigation.

11. As such, this petition is nothing but abuse of process of law and deserve to be dismissed. Accordingly the petition is dismissed with costs of Rs.10,000/-.

R.S. Sahare

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