

**MHAH130009882023**



**ORDER BELOW EXH.12.IN CIVIL M.A. NO. 61/2023**

**Suresh Fattesinh Sinhmar & Ors.**

**Vs.**

**Vithhal Rambhau Mote & Ors.**

1] The present appeal is filed by third parties against impugned Judgment and decree passed in RCS No. 03/2012 dated 28/09/2021 whereby the respondent No. 1 to 3 have been awarded with relief of recovery of possession of encroached area of 21 Ares against the original defendants who are owner of land Gat No.194 located at village Wadala-Bahiroba,Tq. Newasa.

2] The dispute is pertaining to above said land Gat No.194 and land Gat No.193/1 regarding alleged encroachment. The Ld. Trial Court held that the defendant/purchaser of land Gat No.194 has made encroachment to the extent of 21 Ares in the land Gat No.193/1 of the plaintiffs. Though the defendants have contested the suit by filing written statement, it appears that the evidence of the plaintiffs remain unchallenged as the defendants have failed to cross-examine any witness of the plaintiffs. Consequently, the successful plaintiffs have filed Regular Darkhast No.52/2021 before the Executing Court. In that proceeding, the decree holders have succeeded to execute possession warrant whereby the encroached area of 21 Ares has been obtained by the decree holders through the process of Court on dated 15/09/2023. The copies of possession

warrant, Bailiff report, panchanama dated 15/09/2023 and the possession receipt is filed by the present appellants/ applicants in the present proceedings for perusal of this Court.

3] There is certain delay in filing of the appeal against the impugned decree. The delay is of 750 days and therefore, the appellants/applicants have filed delay condonation application wherein notices are issued to all the respondents including original plaintiffs No. 1 to 3.

4] The original plaintiffs i.e. respondents No. 1 to 3 have appeared in the matter today and sought the time to file say on delay condonation application. Thereafter, the appellants/applicants have filed present application below Exh.12 stating that the respondents No.1 to 3 have already obtained possession of alleged encroached area behind the back of the present appellants/applicants who are said to be in physical possession of the suit property and now the Executing Court may at any point of time, confirm the said possession in the execution proceedings No.52/2021. If that is done, according to the appellants/applicants they will be nowhere to get any relief. Therefore, by way of present application below exh.12, the appellants/applicants desire to stay the execution of order below Exh.10 in R.D. No.52/2021.

5] It is to be noted that at this juncture, the appellants/applicants have not filed copy of application below Exh.10 in R.D.No.52/2021. Since the applicants have alleged that the Executing Court has been misdirected or misrepresented by applying fraud by the decree holders while filing application below Exh.10, the

copy of said application is required to be filed in the present proceedings.

6] The respondents No.1 to 3 who are main contesting parties, have filed application below Exh.15 today and thereby stated that the Reg. Darkhast No.52/2021 is kept on 05/02/2024 wherein the matter is kept for hearing on the application filed by third parties (i.e. present appellants/applicants) and on that count, they have sought certain time to file detailed say on application below Exh.12.

7] I have gone through the proceedings, and the copies filed by the appellants/applicants. Though the copy of application below Exh.10 before Executing Court is not on record, I have perused rest of the papers in the light of objections taken by the appellants/applicants regarding impugned decree. Without making detailed discussion on the facts of the case at this juncture, it would be suffice to say that the original defendant No.2 has sold the suit property involving encroached area to the original defendant No. 3 & 4 ( present respondent No.5 & 6) by way of sale deed dated 14/05/2012 i.e. during pendency of original suit. Thereafter, the present appellants/applicants have purchased the suit property from defendants No.3 & 4 by way of sale deed dated 07/10/2020 which is also a transaction during pending of the suit proceedings. In that respect Mutation Entry No.7147 is sanctioned in their favour. The appellants/applicants have themselves mentioned in the present application that respondent No.1 to 3 i.e. original plaintiffs have raised objection for said sale-deed. It indicates that the present appellants/applicants got knowledge of dispute regarding the suit property during that period.

8] It is also to be noted that the executing proceeding before Ld.Trial Court are pending at the stage where present applicants have filed third party application and raised their concern about suit property. The Executing Court has called upon the say of decree holder and the matter is pending for hearing on said application. It is kept on 05/02/2024. It goes without saying that unless the third parties are heard, as per concluding provisions of Order XXI of CPC, the Executing Court may not proceed further to dispose of the executing proceedings by confirming possession of decree holders. The applicants/appellants have knocked the doors of executing Court as well as the First Appellate Court at one and same time.

9] In view of said observations, I do find it just and proper to call say of respondent No.1 to 3 and after hearing both sides, it would be better to consider any of the prayer of appellants/applicants. Hence, following order is passed-

**ORDER**

1)	Respondent No. 1 to 3 are hereby directed to file their say on application below Exh.12, and if possible, the say shall be filed on delay condonation application on or before 18/01/2024.
2)	Application below Exh.15 is accordingly allowed.

Date : 02.01.2024

( **S. P. Deshmukh** )  
District Judge-2, Newasa

**CERTIFICATE**

Dictated on : 02/01/2024  
Transcribed on : 03/01/2024  
checked on : 03/01/2024  
Signed on : 03/01/2024

I affirm that the contents of this PDF file are word to word as per original Judgment/order.

Name of Steno : Sau.S.S.Apte  
Name of Court : District Judge-2 & A.S.J., Newasa  
Date : 03/01/2024

Sd/-  
Stenographer (Grade-I)Newasa