

COMMON ORDER BELOW EXH.1 AND 4
(Dated 09.09.2015)

The Decree Holder filed the present execution proceeding in view of the judgment and decree in Reg. Civil Suit No. 48/2000 in which permanent injunction is granted in favour of the Decree Holder and thereby the Judgment Debtor is restrained from disturbing the possession of the Decree Holder on the Bhumapan No. 63, area 1644 sq. mtr. The Decree Holder moved an application Exh. 4 for restoration of possession of the suit property.

2. It is contended by the Decree Holder that the Judgment Debtor deliberately by disobeying the order of this court forcibly and illegally entered in the room constructed by Decree Holder whereby disposes Decree Holder illegally and took the possession of portion suit plot, hence it is necessary to restore the possession of the house over suit plot bearing Nagar Bhumapan No. 63 area 1644 sq. mtr. to the Decree Holder.

3. The Judgment Debtor did not file say to the application Exh.4, but argued on the present application Exh. 4 and Exh. 1. It is submitted by the learned counsel for the Judgment Debtor that the decree in Reg. Civil Suit No. 48/2000 is for permanent injunction and therefore the Decree Holder cannot claim possession or restoration of possession in the present execution

proceedings. It is further argued by the learned counsel for the Judgment Debtor that the suit property about which the decree was passed in Reg. Civil Suit No. 48/2000 is already transferred to the original owner in view of the Maharashtra Restoration of Land to Scheduled Tribe Act. Therefore there remains no land for execution. It is further submitted that as per section 36(A) of the said Act, the plaintiff or the Decree Holder cannot claim the possession of the suit property. The suit property is part and parcel of Gat No. 79 which was later on converted in the Gat No. 334 and as per the order of Revenue Department said Gat No. 334 is returned back to the original owner in view of the Maharashtra Restoration of Land to Scheduled Tribe Act. In support of his argument, the learned counsel for the Judgment Debtor has filed several documents on record.

4. I have gone through the documents filed by both the parties. The order of the Maharashtra Revenue Tribunal, Nagpur, the Writ Petition No. 1216/2003 order dated 6th June 2007 of the Hon'ble High Court, and other several documents filed on record i.e. form no.4, the extract of inquiry register, the order of Tahsildar, Deori, the order of the S.D.O., Deori, 7/12 extract and the map are considered. On going through these documents, it is seen that nowhere it is mentioned that the suit property is part and parcel of Gat No. 79 or 334 and the suit property is returned back to the owner in view of Maharashtra Restoration of Land to Scheduled Tribe Act. Though it is visible from inquiry register that

the suit property is of Gat No. 79 but that does not mean whatever order passed by Tahsildar, Deori and S.D.O., Deori and even by other authorities are in respect of the land mentioned in the present execution proceedings also. The suit property is not clearly mentioned in any of the order of the authorities.

5. I have gone through the judgment in Reg. Civil Suit No. 48/2000 (Exh. 5). It is seen from the said judgment that the original plaintiff (Decree Holder) in that suit by filing written statement to the counter claim vide Exh. 11, admitted that the land purchased by him from the defendant of Gat No. 79 was about two acres and it is returned back by her to the defendant in view of the Maharashtra Restoration of Land to Scheduled Tribe Act. But it is denied by the plaintiff (Decree Holder) that the suit property has no concerned with the said two acres land. It is further defence in the counter suit, of the plaintiff (Decree Holder) that the suit property has no concerned with the Gat No. 334 and Bhumapan No. 63 (Suit property) is totally different than the other land of Gat No. 79 about which the defendant in that suit made counter claim.

6. It is further seen from the judgment in Reg. Civil Suit No. 48/2000 (Exh. 5) that my learned predecessor i.e. Civil Judge Junior Division, Sakoli considered all these things while deciding Reg. Civil Suit No. 48/2000. It is held in the said judgment that Bhumapan No. 63 having area of 1644 sq. mtr. Which is the

subject matter here, is in possession of the plaintiff and the plaintiff is the owner of it, after considering the Maharashtra Restoration of Land to Scheduled Tribe Act. The transfer of land of Gat No. 79 or 334 was also considered by the Court in that judgment. It is also held by the court that name of the plaintiff's name as owner of the suit property is mutated in revenue record and the suit property is not the field but it is non-agricultural land shown as Gavthan in the revenue record. The court held that the land about which the defendant is saying is Gat No. 334 is a different property from the suit property. Therefore, whatever objection raised by the Judgment Debtor in the execution proceeding are already being considered by the court in Reg. Civil Suit No. 48/2000. There is not a single document on record which can show me that judgment in Reg. Civil Suit No. 48/2000 is set aside by any authority or by any appellate court. Therefore, the objection raised by the Judgment Debtor has no base.

7. In respect of the restoration of possession in execution proceeding which is based on decree of permanent injunction, the learned counsel for the Decree Holder has put his reliance on filing three authorities –

1) Panjab Haryana High Court, Banwari Lal vs Municipal Committee on 15 January, 2007, AIR 2007 P H 54,

2) Panjab Haryana High Court, Harbans Singh And Anr. Vs Daulat Ram and Ors, on 27 April, 1993, (1993) 104 PLR 399,

3) Panjab Haryana High Court, Kapoor Singh vs Om Parkash

on 15 May, 2009.

8. I have gone through the above mentioned three authorities. After considering the ratio laid down in these three authorities, it is very much clear that the executing court on the basis of decree of permanent injunction may restore the possession of suit property in the execution proceedings when such willful act is done by the Judgment Debtor along with the order civil prison. Therefore, the above mentioned authorities perfectly applicable to the present case. Hence I allow Exh. 4 partly and pass the following common order below Exh. 1 and 4.

ORDER

1. The application Exh. 4 is partly allowed.
2. The Judgment Debtor to restore possession of the suit property to the Decree Holder immediately within one week.
3. If Judgment Debtor fails to restore the possession then the Decree Holder may take assistance of the court in that respect.
4. No order as to Costs.

Date:- 09.09.2015

Sd/-
(S.J. Bhattacharya)
Civil Judge Jr. Dn., Deori.