

MHNS110003102023

Regular Darkhast No. 14/2023

Mukund Shantaram Raut Vs. Sattar

Dagadu Shah



ORDER BELOW EXH.14

Decree holder has filed this application under Order 21 Rule 35 of C.P.C. for issuing possession warrant of suit property.

2. It is stated by decree holder that as per Judgment and Order in R.C.S.No.244/2013 dated 22.01.2016, the decree is filed for execution. The defendant was ordered to hand over the vacant possession of the suit property and to pay rent arrears of Rs.1280/- as mentioned in decree to the plaintiff i.e. decree holder. It was specifically ordered to hand over possession of suit property within 4 months from the date of order. However, defendant has not handed over possession of suit property as per the order of the Court. The decree holder has not received any notice regarding any stay to the execution till date. Hence, it is prayed to issue possession warrant and possession of suit property be delivered to decree holder.

3. The judgment debtor has opposed the application by filing their say on the reverse side of the same application. It is asserted that the suit property is already leased to the judgment debtor for a period of 99 years by Motiram Sambhu Davare. This lease agreement has not been set aside by any competent

Court. The judgment debtor contends that the decree was obtained by misleading the court. Although possession of the suit property is sought for an area of 5x10 feet, the judgment debtor actually possesses an area of 15x18 feet. Therefore, the judgment debtor prays that the application be rejected, or alternatively, be allowed only up to the area of 5x10 feet.

4. Perused the application and say filed by judgment debtor. Perused decree. Heard the Ld. counsel for both sides. There is no appeal or stay to the proceeding is admitted to both learned counsel. As per the judgment and order in R.C.S.No.244/2013 dated 22.01.2016 the judgment debtor / defendant was directed to hand over possession of the suit property mentioned in plaint para No.1 to the decree holder / plaintiff within 4 months from the date of order. The description of suit property is area admeasuring **5x10 sq. ft.** plot bearing house number 1649 of the Gram Panchayat from gat No. 626/2, situated at Vinchur, Tal. Niphad, District Nashik. Said Judgment and Decree has been confirmed in R.C.A. No.32/2016 & in Second Appeal No.12/2023 before Hon'ble High Court. The Honble High Court held that, *“Accordingly time of 6 months is granted to the appellants to vacate to the suit premises on the condition that, the appeallants to file under taking in this Court that they shall handover possession of the suit premises to the respondent on or before 23rd January, 2024 i.e. before completion of said period of 6 months, subject to order of stay if any granted by the Supreme Court. The said undertaking shall also state that appeallants are only in possession of the suit property and they will pay rent for the period of 6 months and they will also clear all the arrears. Such undertaking to be filed on or before 31st October, 2023”*.

5. The judgment debtor has objected execution of decree on similar grounds which were already decided by the Court. The judgment debtor submits that he possesses a total area measuring 15x10 ft. However, I would like to mention that the suit property mentioned in the plaint, and subsequently decreed, measures 5x10 ft. Therefore, an area measuring 5x10 ft. will be handed over to the decree holder. The executing Court cannot go behind the decree nor can it question its legality or correctness. The decree has attained finality. I do not find substance in the objection by judgment debtor. Hence, I pass following order.

ORDER

Issue warrant under Order 21 Rule 35 of C.P.C. to the bailiff to deliver possession of the suit property to decree holder.

Date : 13.03.2025

(S.P. Deshpande)
Jt.Civil Judge Jr. Division,
Niphad