



IN THE COURT OF CIVIL JUDGE JUNIOR
DIVISION,
AT MALVAN, DISTRICT-SINDHUDURG

Rajesh Bhaskar Lone

Applicant

VERSUS

Sunanda Rajaram Morvekar and others

**Opponents/
Decree holders**

ORDER BELOW EXHIBIT 44 IN R.D.NO.10/2004

(Passed on 20/11/2019)

This is an application for impleading the applicant as party to the present proceeding and for staying the order passed below Exhibit 1 and 40 on 24/06/2013.

[2] It is the contention of the applicant that the subject matter properties of the present execution petition i.e. Survey No.3 (76A1) Hissa No.19A admeasuring 0-05-6 and Survey No.3 (76A1) Hissa No.19B/3 admeasuring 0-06-0 are his ancestral properties [hereinafter the above properties are referred as 'suit properties' for convenience.] It is the contention of the applicant that the suit properties were in possession of the applicant's predecessors Kashinath Raghoba Lone and Raghoba Bhikaji Lone. There was an ancestral house bearing Revandi Grampanchayat House No. 75 in the suit properties. It was later on renumbered as Miryabanda Grampanchayat House No. 71 after the said Grampanchayat came into existence. Further, there is an ancestral Mangar bearing House No. 218 in the suit properties. The property bearing Hissa No. 19B1 is adjacent to the suit properties. The applicant's family are in

possession of Hissa No. 19B1 as tenants and their names are entered in the 7/12 extract as tenant. It is his contention that the suit properties are ancestral tenancy properties of the applicant's family from last 3 generations. The applicant's grandfather Kashinath Raghoba Lone had 6 sons namely, Suryakant, Balkrishna, Sudhakar, Bhaskar, Madhukar and Satyawan. The applicant is an heir from the branch of Bhaskar Kashinath Lone.

[3] It is the contention of the applicant that the suit properties were in the possession of the applicant's family only and no one else was ever in possession of the suit properties. Chandrabhaga Sarang was residing in a hut in the suit properties with the permission of the applicant's predecessors. Later on the hut collapsed and as Chandrabhaga had no children, no one reconstructed the hut. It is his further contention that there is house No. 71, Mangar House No. 218 and a latrine of the heirs of Kashinath Raghoba Lone in the suit properties. The applicant's grandfather has planted coconut, mango, jack fruit and teak trees in the suit properties and the applicant's family is taking income from it. There is a laterite stone compound wall of the applicant's family to the suit properties. The decree holders have no concern with the suit properties. However, the decree holders, got their names entered in the 7/12 extract of the suit properties by taking disadvantage of the fact that the names of the applicant's family were not entered as tenant on the 7/12 extract. The decree holders got their names entered in the 7/12 extract by stating in the suit filed by them that the houses in the suit properties were in their property. They did not implead all the children of Kashinath Raghoba Lone as party to the suit. The applicant came to the know about the aforesaid facts

recently from his maternal brother when the Court staff had come to demolish house No. 71, Mangar House No. 218 and latrine. His maternal brother told him on 23/07/2013 that the possession of the suit properties is going to be handed over to the decree holders by demolishing the houses. Thereafter, the applicant immediately came to his village and enquired about the matter. At that time he came to know about RCS No. 23/1988 and the present execution petition. It is his contention that after the death of Kashinath Raghoba Lone his wife Vatsala Kashinath Lone's name was entered in the Grampanchayat record of the aforesaid houses. After her death all the heirs of Kashinath Lone had interest in House No. 71 and Mangar House No. 218. But all of them were not made party to RCS No. 23/1988. The decree holders have proceeded with the present execution petition illegally by misleading the Court. Hence, the present application.

[4] Decree holder No. 2 strongly resisted the application by filing her say at Exhibit 71. She has denied the contention of the applicant. It is her contention that the application is false and frivolous. It is her contention that she is the owner and possessor of the suit properties. The applicant or his family has no right, title or interest in it. The suit properties were purchased by her husband late Krushna Laxman Aadkar from decree holder No.1 on 10/08/1987 by deed No. 210/1987. The decree holders had instituted RCS No. 23/1988 against judgment debtors No. 1 and 2 on 09/03/1988 for injunction, removal of encroachment and possession. A Court Commissioner was appointed for inspection of the suit properties. He filed his report at Exhibit 25 in the suit. Eventually the suit was decreed on 17/04/1998. It is her contention that the applicant has no

concern with the encroached construction. The applicant is trying to relate the encroached construction with Grampanchayat House No. 71 and Mangar House No. 218. The applicant is trying to delay the proceeding of the present petition by stating that the encroached construction is Grampanchayat House No.71 and Mangar House No. 218 owned by Vatsla Kashinath Lone. The contentions raised by the applicant in this application were never raised by the judgment debtors in the suit or in the execution proceedings. Therefore, the applicant is making false statements to get himself impleaded as a party to the present proceeding in order to delay the execution. The applicant has not produced any documentary evidence to show his right, title or interest over the encroached construction. Therefore, it is not necessary to implead him as a party to the present proceeding and to stay the proceeding. Hence, it is prayed that the application is rejected.

[5] Heard the learned advocates for the applicant and the decree holders. Perused the record and proceedings of the case.

[6] The points for determination along with the findings and reasons thereon are as under :

SR. NO.	POINTS	FINDINGS
1.	Whether the applicant has made out a case to implead him as a party to the present execution proceedings ?	NO.
2.	Whether the present execution proceedings need to be stayed ?	NO.

3.	What order ?	The application is rejected.
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REASONS FOR FINDINGS

POINT NO. 1 :

[7] At the outset it is worthy to mention that the applicant is trying to get himself impleaded as a party to the present execution proceeding. It is not in dispute that he was not a party to RCS No. 23/1988. Therefore, it is necessary to ascertain as to under what capacity a third party can be impleaded as a party to the execution proceedings. Order XXI of the C.P.C. is a complete code regarding execution proceedings. If the execution of a decree for possession is resisted or obstructed by any person, the decree holder can make an application to the Court complaining about such resistance or obstruction. The Hon'ble Apex Court in the Case of **Brahmdeo Chaudhari Vs. Rishikesh Prasad Jaiswal and Anr (1997) 3 SCC 694** has held that even the resistor or the obstructionist can make an application to the Court without him being dispossessed. The contentions of the applicant in the present application clearly show that he is trying to obstruct the delivery of possession to the decree holders setting forth his right over the suit properties. Thus, according to me, it is necessary to treat the present application as one under Order XXI Rule 97 of the C.P.C.

[8] In order maintain an application under Order XXI Rule 97 of the CPC successfully, it is necessary for the applicant/obstructionist to first show that he is in possession of the property in a capacity independent to that of a judgment debtor. If the obstructionist shows prima facie that he has a right to be in

possession independent to that of the judgment debtor, then only there will arise a question of framing issues in respect of the dispute and adjudicating it in accordance with the provisions of Rule 101 and 103 of the CPC. In regard to the above view, I am guided by the decisions of the Hon'ble Bombay High Court in **Jagdish s/o Motilal Joshi Vs. Chandrapal S/o Tulshiram Bhola (2007) 1 Mah LJ 402** and **Kailashchandra Kedarmalji @ Kedarnath Agrawal Vs. Kochaveedu Varghese Joseph and Anr (2019) 1 Mah LJ 662.**

[9] Now moving to the merits of the application, the applicant has raised obstruction to the execution of decree in RCS No. 23/1988 mainly on the following grounds :

1. That the suit properties are his ancestral properties held as tenant from 3rd generation.
2. that there is ancestral houses No. 71, Mangar house No. 218 and latrine of the applicant's family in the suit properties.

[10] Before proceedings to determine the question about the right, title and interest of the obstructionist it will be apposite to refer to the history of the litigation. The copy of judgment in RCS No. 23/1988 is at Exhibit 128/1. The decree holders had instituted RCS No.23/1988 against the judgment debtors for removal of encroachment, possession and injunction. The suit was contested by judgment debtors No.1 and 2. On perusal of the copy of judgment and decree in RCS No. 23/1988 it reveals that the plaintiff had contended that her mother i.e. Chandrabhaga Krushna Sarang was tenant in the suit properties. She bequeathed it to the plaintiff by a Will deed. It was also contended by the plaintiff therein that she purchased the suit properties from the original owner i.e. landlords

by registered sale deed dated 17/10/1986. It also reveals from the copy of judgment that the original plaintiff i.e. Sunanda Morvekar had sold the suit properties to one Krushna Aadkar on 10/08/1987 i.e. before filing of the suit. The heirs of Krushna Aadkar were allowed to continue the suit by the order of the Court in view of no objection given by judgment debtors No. 1 and 2. On the other hand judgment debtors No. 1 and 2 had contested the suit by filing their written statement. It reveals from the judgment that it was their contention that they were tenants from 3 generations in Hissa No.19. They had also raised an alternative plea of adverse possession. It was also their contention that Chandrabhaga i.e. mother of decree holder No. 1 was permitted by the defendants to stay in a hut in the suit properties. The hut collapsed after the death of Chandrabhaga and nobody reconstructed it. The suit was decreed on 17/04/1998 after trial. The defences raised by judgment debtors No. 1 and 2 about adverse possession and tenancy were answered in the negative.

[11] On perusal of the copy of judgment in RCS No. 23/1988 it reveals that an issue about tenancy was framed on 20/09/1991 as issue No. 6A. It was referred to the tenancy Court and the tenancy Court answered the issue in the negative. Thus, issue No.6A in RCS No.23/1988 was answered in the negative as it was the finding of the tenancy Court that judgment debtors No.1 and 2 could not prove that they are permanent tenants for generations in Hissa No. 19. Now the applicant is once again claiming that the suit properties are in possession of his family as tenant from 3 generations. The applicant has given the details of his family in paras No. 1 and 2 of the present application. From those details it reveals that one Raghoba Bhikaji Lone was their common ancestor and Kashinath Raghoba Lone was

his son. Kashinath Raghoba Lone had 6 sons namely Surykant, Balkrushna, Sudhakar, Bhaskar, Madhukar and Satyawar. It was the contention of judgment debtors No.1 and 2 that they are tenants from 3 generations in the suit properties. As aforesaid the said contention was negated by a competent Court. Now the applicant is again raising the same issue in the present proceedings. As aforesaid the ancestors of judgment debtors No. 1 and 2 and the present applicant are common. Thus, it implies that the right which the applicant is claiming is through his common ancestors. But the said right about tenancy is already negated. It is pertinent to note that no appeal was preferred by judgment debtors No. 1 and 2 against the decree in RCS No. 23/1988. Thus, the judgment and decree of this Court in RCS No. 23/1988 has attained finality. The applicant has not raised any right independent to that raised by judgment debtors No. 1 and 2. It is also worthy to note that no revenue record about the suit properties is produced on record to show, even prima facie, that the applicant or his predecessors or the members of his family were tenants in the suit properties.

[12] Another ground on which the applicant is trying to obstruct the delivery of possession of the suit properties is that Grampanchayat House No. 71, Mangar House No. 218 and a latrine are his ancestral properties. The learned advocate for the applicant submitted that the aforesaid buildings are standing in the suit properties. In order to substantiate his contention a copy of assessment extract of house No. 71, 218 and 75 is produced on record. The applicant has also filed certificate dated 14/02/2019 of Miryabanda Grampanchayat, true copy of assessment form of Grampanchyat Revandi dated 03/03/1972, application dated

03/04/1971 given by Vatslabai Kashiram Lone to Miryabanda Grampanchayat, assessment extract of house No. 75 for the year 1968-69, assessment extract of house No. 71 for the year 2005-06, assessment extract of Mangar House No. 218 for the year 2019-20 and 1983-84 to 1989-90. On perusal of the aforesaid documents it reveals that the name of Vatslabai is entered in the assessment extract of house No. 71 and Mangar House No.75. On the contrary, decree holder No.2 has contended that the applicant is trying to mislead by relating the encroached construction with the aforesaid buildings. I find substance in the contentions of decree holder No. 2 as there is nothing on record, even prima facie to connect the aforesaid houses with the encroached construction.

[13] Further on perusal of the copy of judgment in RCS No. 23/1988 it reveals that it was nowhere the case of judgment debtors No. 1 and 2 that house No. 71, Mangar House No.218 were constructed in the suit properties by them. Moreover, the judgment debtors No. 1 and 2 have also not raised any objection to the contention of the applicant that the aforesaid houses are ancestral properties. Even if for a moment it is assumed that the houses alleged by the applicant are the encroached constructions, it is pertinent to note that there is a decree of this Court which has held that the said construction is illegal and carried out by doing encroachment over the suit properties. It is also held by this Court that the decree holders are the owners of the suit properties i.e. the land beneath the construction. Further, if the allegations of the applicant are seen, it is nowhere his case that he came into possession of the alleged construction or that he carried out the alleged construction, in a capacity independent to that of judgment debtors No. 1 and 2.

[14] There is no material on record to show, even prima facie, that possession of the obstructionist or his entry in the suit properties was independent and in exclusion to judgment debtors No.1 and 2. It is pertinent to note that, he is not an outsider or a stranger. He is a member of the family of the judgment debtors No. 1 and 2. He has failed to show that he is a person who has primary title in his own right since a time which is prior to the suit and the decree subject to execution. Further, the applicant has produced extract of form No. 6C which relates to the proceedings about ascertainment of heirs. From the said document it reveals that Vatsla Kashinath Lone died in the year 1983. The names of her 6 sons, 3 daughters and a daughter in law were entered as her legal heirs. Further, the name of her elder son Surykant Kashinath Lone was entered as joint family manager. This shows that judgment debtor No.1 was the joint family manager of the applicant's family. Moreover the suit R.C.S.No. 23/1988 was instituted in the year 1988 i.e. after 5 years after death of Vatsalabai. If the building in the suit property stood in her name, judgment debtors No.1 and 2 would have definitely raised a plea about same in the suit. But that does not appear to have been done from the copy of judgment in R.C.S.No.23/1988. In fact, the said plea is not even raised by judgment debtors No.1 and 2 in the present execution proceedings. Thus, the right, if any of the applicant, cannot be said to be in exclusion to that of judgment debtors No. 1 and 2. Moreover, it is worthy to mention that no plea about non joinder of the applicant or any of his siblings was ever raised by the judgement debtors No. 1 and 2 in RCS No. 23/1988.

[15] Another significant thing which needs notice is that the judgment debtor has remained silent since the applicant has come in

picture. Thus, the applicant appears to be staged by judgment debtors No.1 and 2 prima facie. But the applicant/obstructionist has failed to raise any triable issue requiring adjudication in respect of his right, title or interest in the suit properties in accordance with rule 101 and 103 of the CPC. Therefore, I am of the view that the applicant has not made out a case to implead him as a party to the present proceedings. Therefore, I answer point No. 1 in the negative.

POINT NO.2 :

[16] The applicant has failed to show his right, title or interest in the suit property in his independent capacity. Had he been successful in showing the same prima facie, issues about the same would be framed and a proceeding alike the suit would have commenced to decide the question of right, title or interest of the applicant as expected by rule 101 and 103 of the CPC. In that scenario, the execution of the decree would automatically stand stayed till the question of applicant's right, title or interest was decided. But as aforesaid, no such scenario arises in the present case. Therefore, there is no need to stay the present execution proceeding. Hence, there is no question of staying the orders below Exhibit 1 and Exhibit 40 about issuance of possession warrant. Thus, I answer point No. 2 in the negative.

POINT NO. 3 :

[17] In view of answer to points No. 1 and 2, the application is liable to be rejected. The decree holders are entitled to possession of the suit properties even from the applicant. Hence, I proceed to pass the following order -

ORDER

The application is rejected.

The obstruction by the applicant/obstructionist or anyone on his behalf or on behalf of judgment debtors No. 1 and 2 shall be removed and the decree be executed.

Issue possession warrant accordingly.

Date : 20/11/2019

Place : Malvan

Bhanupratap Chouhan

Civil Judge Junior Division

Order dictated on 20/11/2019

Order checked on 26/11/2019

Order signed on 26/11/2019

Date : 26/11/2019

Place : Malvan

Bhanupratap Chouhan

Civil Judge Junior Division

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED ORDER/JUDGMENT.”

Chandrakala Vasant Chavan
NAME OF STENOGRAPHER

Name of the PO	Shri. Bhanupratap Chouhan
Date of pronouncement	20/11/2019
Order checked on	26/11/2019
Order signed by PO on	26/11/2019
Order uploaded on	28/11/2019