

R.D. No.06/2023

old No.154/1978

Dnyaneshwar (through LR's)vs. Nagu(through LR's).

ORDER BELOW EXH.622

1] Three Objectors moved present Application for stay to the order dated 04.12.2024 vide Exh.619 wherein Possession Warrant has been ordered to be issued for the purpose of execution of decree. Decree holder (in short D.H.) has filed Say below same exhibit.

2] According to these Objectors, it is necessary to stay Order dated 04.12.2024 vide Exh.619 for the reasons that, Symbolic Possession has been directed in view of Judgment and Order dated 11.08.2022 (common order below Exh.01, 354, 355 and 356). D.H. has concealed the aforementioned fact. It is also prayed that, Order vide Exh.619 be amended to the extent of relief in favour of these Objectors. Hence, prayed for allowing the Application.

3] According to D.H., Possession Warrant has been rightly issued. Though Symbolic Possession is directed but, the Objectors are making wrong interpretation of the term. D.H. is entitled to the relief not only in view of the Original Decree but, also in terms of Judgment and Order dated 11.08.2022 vide Exh.01. Hence, prayed for rejecting the Application.

4] Heard Mr.U.H.Sanas, the learned advocate for three Objectors. Heard Mr.A.V.Salunkhe, learned advocate for D.H.

5] Perused the Application and Say. I have gone through the Judgment and Order dated 11.08.2022 (Common Order below

Exh.01, 354, 355 and 356). I have also gone through the Original Decree.

6] Before deciding the Application, it is necessary here to consider the following aspects, which resulted into passing of various orders:

i) Three Objectors raised objection to the execution of decree by moving their objections vide Exh. Nos.354, 355 and 356 respectively.

ii) These objections were decided as per Common Order below Exh.01, 354, 355 and 356 in terms of Judgment dated 11.08.2022, in view of Order XXI Rule 97 of the Code of Civil Procedure (in short CPC).

iii) It is after the aforementioned Order dated 11.08.2022, the D.H. moved an Application vide Exh.591 raising the issue as to interpretation of the term “Symbolic Possession” in clause No.2 of the Operative Order dated 11.08.2022.

iv) While deciding the aforementioned Application vide Exh.591, it has been observed as: “ 5) *Admittedly, the order dated 11.08.2022 is a Judgment under order XXI Rule 97 of CPC. It has effect of decree. Perusal of aforementioned order clearly shows that it stood in favour of D.H. Mere*

direction as to “symbolic possession” cannot deprive D.H. from seeking actual possession especially when order stands in favour of D.H. Even otherwise also no grounds made out as per Section 152 of CPC.”

v) It is in view of the aforementioned observation, Application vide Exh.591 was rejected by Order dated 29.11.2023.

vi) It is thereafter, J.D. No.2A-1 namely Dilip Anantrao Gite moved an Application vide Exh.593 challenging the correctness of the Commission Report vide Exh.317. The said Application has been rejected by order dated 13.08.2024 vide Exh.593.

vii) Pending the Darkhast, J.D.No.3A-1 is reported to be dead. His LR's are already the parties to the present Darkhast. Darkhast was directed to be amended as per order dated 04.09.2024 vide Exh.617.

7] The aforementioned status of the case and the progress of the matter is the part of record and admitted by both the parties. Under such circumstance, when the matter is pending for execution of decree, D.H. has rightly moved an Application for reissuing Possession Warrant by moving an Application dated 04.12.2024 vide Exh.619. Say was called. On the relevant date, J.D.No.2A-1 Dilip Anant Gite was present. This J.D. No.2A-1 has neither filed Say nor advanced hearing. As such, Application vide Exh.619 has been

decided by Order dated 04.12.2024. It is by the said Order Possession Warrant was directed to be issued alongwith certain directions to the Bailiff, City Survey Officer, Police, M.S.E.D.C. office and to the D.H.

8] It is material to note that, after passing of the said order dated 04.12.2024, immediately on the next date, three Objectors (vide Exh.354, 355 and 356) moved an Application vide Exh.621 praying for taking matter on Daily Board dated 05.12.2024. It was prayed that, Order vide Exh.619 be stayed immediately and order be amended accordingly. The said Application vide Exh.621 has been rejected.

9] Present Darkhast was fixed for compliance on 07.12.2024. As such, present Application vide Exh.622 is placed on record by three Objector (vide Exh.354, 355 and 356). Needless to say, J.D. No.2A-1 accompanied these Objectors and remained as mute spectator before court.

10] It has been vehemently argued by learned advocate for Objector that, D.H. has concealed the “Symbolic Possession” clause so mentioned in Order dated 11.08.2022 (Common Order below Exh.01, 354, 355 and 356). According to learned advocate, D.H. ought to have bring to the notice of this court that, Symbolic Possession has been directed. Learned advocate relied upon para No.13 of the said Order dated 11.08.2022. Emphasizing the Symbolic Possession, learned advocate strongly pointed out that, the objection of one of the Objector is yet to be decided and thus, the Order directing issuance of Possession Warrant is not justified. Inspite of order below Exh.591, D.H. has malafidely obtained order below

Exh.619. Final Decree cannot be executed as such.

11] As against this, learned advocate for D.H. most humbly submitted that, the objection so raised by these Objectors (vide Exh.354, 355 and 356) had been already rejected. These Objectors have no voice before this Court after Order dated 11.08.2022 (Common Order below Exh.01, 354, 355 and 356). Learned advocate has pointed that, in the present Darkhast Issues were framed in view of the observation of the Executing Court that there will be no need of separate suit and the objections are required to be decided as per order XXI Rule 97 of CPC. In spite of the aforementioned observation, these Objectors proceeded to file suit before Hon'ble Civil Judge Junior Division, Wai. As such, J.D.No.2A-1 once again, trying to obstruct the D.H. from obtaining possession as per Decree.

12] Perusal of paragraph No.13 of Order dated 11.08.2022 (Common Order below Exh.01, 354, 355 and 356) shows that, the Court has observed that J.D. No.2A-1 has introduced the Objectors only with the intention to frustrate the Decree. In view of the said observation, Issue No.5 appears to have been answered in affirmative. It is specifically held that, Decree is very well binding upon everyone. The Court further expressed the opinion as to "Symbolic Possession" in view of Final Decree. It is material to reproduce here the Operative Order clause No.2 " 2) *Decree holders are entitled to recover the possession of their respective shares in the suit house as per the final decree with the symbolic possession of the premises let out to the Objector*". This clause though speaks about symbolic possession but it is in view of final decree. At the same time,

final decree nowhere speaks about symbolic possession. Thus, if the aforementioned order dated 11.08.2022 is in terms of Final Decree then the clause as to symbolic possession is irrelevant. Even otherwise also, it is the mere observation of the Court.

13] Coming to the strong objection raised by learned advocate for Objectors that, Application of D.H. vide Exh.591 has been rejected and inspite of this, D.H. obtained order as to Possession Warrant in view of Order vide Exh.619. It is material to note that, Application vide Exh.591 has been rejected for want of contents of section 152 of CPC. But, it cannot be ignored that the Court has specifically held: “ 5) *Admittedly, the order dated 11.08.2022 is a Judgment under order XXI Rule 97 of CPC. It has effect of decree. Perusal of aforementioned order clearly shows that it stood in favour of D.H. Mere direction as to “symbolic possession” cannot deprive D.H. from seeking actual possession especially when order stands in favour of D.H. Even otherwise also, no grounds made out as per section 152 of CPC.*” The aforementioned observation is very well specific and clear that mere direction cannot deprive D.H. from seeking actual possession as per Original Decree, especially when the objections of these three Objectors have been rejected by Order dated 11.08.2022 (Common Order below Exh.01, 354, 355 and 356).

14] It is necessary here to see that, whether these Objectors have come up before the court with clean hands and whether they are justified in raising objection inspite of rejection of the objections so raised by them ?

15] It is material to note that, Issues were framed in view of

observation made in order dated 17.10.2019 vide Exh.354, order dated 17.10.2019 vide Exh.355 and order dated 17.10.2019 vide Exh.356. It has been specifically observed in all the aforementioned three orders : “ It is clear that this Application can be decided under order XXI Rule 97 and there is no need to file separate suit.” In spite of the aforementioned observation, these three Objectors proceeded to file suit before Civil Judge Junior Division, Wai. It is surprising to note that, the suit has been filed after passing of aforementioned orders vide Exh.17.10.2019. It appears that, these Objectors failed to bring to the notice of the Executing Court that there were observations as above by the learned predecessor Executing Court.

16] These Objectors instead of bringing the aforementioned observation to the notice of the Executing Court, had very cleverly submitted before the Executing Court regarding pending suits before Civil Judge Junior Division, Wai. It is due to the said concealment of the fact on the part of these three Objectors the then Executing Court was compelled to make such observation against the Original Decree of which the execution is pending since the year 1978 and in view of the Judgment and order in R.C.S. No.1077/1928 (Matter is 45 years old). It is for the aforementioned reasons, it cannot be said that these Objectors have come up before this court with clean hands.

17] Once, the objection so raised by the Objector has been heard and clearly decided after giving opportunity to lead evidence in terms of Judgment dated 11.08.2022 (common order below Exh.01, 354, 355 and 356), there is no voice for Objectors to come up before the Court and to comment upon Order vide Exh.619 and that too, with the help of J.D.No.2A-1 who is present before the Court. For this

reason, it is not justified that these three Objectors raising objection regarding passing of Order below Exh.619.

18] It appears that, these three Objectors suddenly felt very concerned about the aspect that the objection of one of the Objector is yet to be decided by the court. As earlier held, these Objectors have no voice to comment upon Orders of this Court. It is for the concerned aggrieved Objector to come up before the Court and shall justify his prayer, if any. It will not be out of place to mention here that, these three Objectors who are accompanied with JD No.2A-1 also brought along with them one more Objector namely Pradip Gajanan Yewale who alleges that the Executing Court has failed to decide his objection and he has placed on record his Application vide Exh.625. This Application vide Exh.625 has to be decided by separate Order.

19] It is only for the purpose of showing the conduct of these Objectors and J.D.No.2A-1 (against whom it is already observed that he has introduced the Objectors only with intention to frustrate the decree, in view of order dated 11.08.2022); the reference as to Application vide Exh.625 has been made in the present order. For all the aforementioned reasons, following order is passed :

ORDER

- 1] Application (Exh.622) is rejected with costs.
- 2] Three Objector shall pay cost of Rs.1,50,000/- (One Lakh Fifty Thousand) jointly or severally to the Decree holders within one month from the date of this order, failing which Decree Holders are

entitled to recover the same at the rate of interest 2% p.a. from the date of failure till the final realization of entire amount.

Place : Wai
Date : 09.12.2024

(**Priti D. Taru**)
Civil Judge Senior Division, Wai
Dist. Satara.