

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

EXECUTION APPLICATION NO. 290 OF 2020

Atlanta Ltd. ...Applicant

IN THE MATTER BETWEEN :

Nirman Industrial Estate Co-op.
Premises Society Ltd. ...Decree Holder

Versus

Samina Arif Khan ...Respondent
Judgment Debtor

WITH
INTERIM APPLICATION (LODGING) NO. 10535 OF 2021
WITH
INTERIM APPLICATION NO. 2408 OF 2020
IN
EXECUTION APPLICATION NO. 290 OF 2020

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Nirman Industrial Estate Co-op.
Premises Society Ltd. ...Applicant/
Plaintiff

Versus

Samina Arif Khan ...Respondent
Judgment Debtor

* * *

- Mr. A. R. Mishra, for Applicant in IAL/10535/2021.
- Ms. Manisha Desai i/by M/s. M. P. Vashi & Associates, for Decree Holder and Respondent in IAL/10535/2021.

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**CORAM : MANISH PITALE, J
DATE : 20th JULY, 2023**

P. C. :

1. By this application, the Applicant (third party) has approached this Court submitting that in the process of executing the decree at the behest of the applicant/Decree Holder, the open area recreation ground/garden of the Applicant – Society has been wrongly

attached. It is submitted that the Applicant/Decree Holder had sought attachment of Plot/CTS No. 1108, Devrukhakar Wadi, Behind Evershine Mall, Link Road, Malad (West), Mumbai and in the process the aforesaid recreation ground/garden of the Applicant - Society bearing CTS No. 1097A of village Chincholi, Malad Malvani has been wrongly attached. It is submitted that the Applicant - Society is unnecessarily suffering due to such attachment and that it deserves to be set aside.

2. The Applicant has annexed number of documents, including plans etc., to demonstrate that its recreation ground/garden is CTS No. 1097A, which could not have been attached in the present execution proceeding.

3. The learned Counsel for the applicant/Decree Holder submits that at the time of attachment, the Defendant was very much present and identified the plot in question. The representative of the Society was also present, but it is claimed on behalf of the Applicant - Society that the representative had protested at the relevant time.

4. It would be a travesty if attachment of the Applicant - Society has been effected in the garb of execution of the decree, which ought to attach properties with which the Defendants/Judgment Debtors are concerned. Therefore, an immediate inquiry in the matter is necessary and if there is substance in the contentions

raised on behalf of the Applicant – Society, the present application certainly deserves to be allowed.

5. In view of the above, the City Survey Officer, Malad, is directed to immediately conduct a survey of the Plot bearing CTS No. 1097A, to verify the claim of the Applicant/Decree Holder that the same is CTS No. 1108, Devrukhakar Wadi, behind Evershine Mall, Link Road, Malad (West), or not. The City Survey officer, Malad, to submit detailed report as to the identify of the property, so as to assist this Court in disposing of the present application.

6. The City Survey Officer shall submit his report, within three weeks from today.

7. The Applicant is granted liberty to serve a copy of the order passed today on the City Survey Officer, Malad, for immediate action in the matter. The Applicant/Decree Holder shall move appropriate application before the City Survey Officer, Malad to carryout the said exercise.

8. List for further consideration on **22nd August, 2023**, to be included in the “supplementary list.”

(MANISH PITALE, J.)