



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3778 OF 2018

M/s. Mohini Resorts Pvt. Ltd.

.. Petitioner

Versus

Shankar Godaji Gore and Anr.

.. Respondents

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- Mr. Ranjit Thorat, Senior Advocate a/w. Mr. Rohan P. Surve, Advocate for Petitioner.
- Mr. Pramod N. Patil a/w. Mr. Shyam Solanke, Ms. Mamta Pandey and Mr. Atharva Deshmukh, Advocates for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.
DATE : JANUARY 05, 2026

JUDGEMENT:

1. Heard Mr. Thorat, learned Senior Advocate for Petitioner and Mr. Patil, learned Advocate for Respondent No.2. None for Respondent No.1. Respondent No.2 is the main contesting Respondent.

2. From the year 2017, Petition is pending for admission. It is heard today finally at the stage of admission by consent of the parties.

3. This Writ Petition assails the judgment and order dated 07.06.2017 passed by learned Judge, Small Causes Court, Pune in Application filed below Exhibit-295 in Darkhast No.1032 of 1980. Copy of the order dated 07.06.2017 is appended at Exhibit-L, page No.129 to the Petition.

4. Petitioner is admittedly the Decree Holder and Respondent No.1 is the original Judgement Debtor. Petitioner has filed Darkhast No.1032 of 1980 seeking execution of the decrees dated 05.11.1968 and 21.11.1968.

5. Respondent No.2 is a third-party Applicant who has filed Application below Exhibit-295 in the pending Darkhast proceeding seeking her impleadment. The name of Respondent No.2 is Shyama Shirish Nagarkar alias Asha Patankar. Application is filed through her Power of Attorney holder M/s. Rajkripa Consultancy, a partnership firm.

6. Briefly stated the nexus of Respondent No.2 with the Decree that has been passed and is being executed by Petitioner as is under:-

6.1. Originally one Trimbak Hari Awate was the owner of land and premises standing thereon forming part of Final Plot of 606 situated in Shivaji Nagar, Bhamburda, Pune in Town Planning Scheme No.1 (hereinafter referred to as the said property). He had mortgaged the said property by registered mortgaged deed dated 24.03.1947 to one Shri Dinkar Balkrishna Vaidya. Respondent No.2 is the grand daughter of Dinkar Balkrishna Vaidya. However immediately one year later on 07.07.1948, Mr. Awate leased a part of the said property to Mr. Shankar Godaji Gore (Respondent No.1) for a term of 25 years by lease deed dated 07.07.1948.

6.2. It is seen that on 13.07.1948, son of Trimbak Hari Awate namely Mr. Shankar Trimbak Awate leased the balance portion of the said property to Mr. Shankar Godaji Gore for a term of 99 years but the said lease deed was registered only on 14.07.1979 i.e. 31 years later. It is seen that some portion of the said property was sub-letted by Mr. Shankar Godaji Gore to Smt. Sulochana Thakur and Smt. Sarde (sub-tenants) who constructed structures thereon and further sub-let the same to Mr. Sardar Biwalkar by deed of lease dated 07.11.1949.

6.3. It is seen that the original lessee Mr. Shankar Godaji Gore thereafter sub-let to Mr. Sardar Biwalkar, the same portion by way of further lease deed dated 27.12.1948 which was in turn sub-let to Smt. Sulochana Thakur and Smt. Sarde further. The original owner Trimbak Hari Awate expired on 16.07.1949 leaving behind his Will.

6.4. In the above background and factual scenario, the mortgagee filed Special Civil Suit No.89 of 1952 in the Court of Civil Judge, Senior Division, Pune against the Executor of the last Will and Testament of Trimbak Hari Awate for recovery of the amount due to him under the Mortgage Deed dated 24.03.1947. The tenants Shankar Godaji Gore and sub-tenants Mr. Biwalkar, Smt. Thakur and Smt. Sarde were also impleaded as parties to the suit.

6.5. It is seen that preliminary decree was passed in the said Suit on 31.01.1953 in favour of Dinkar Balkrishna Vaidya. However, Mr.

Dinkar Balkrishna Vaidya was declared lunatic under the Lunacy Act in Miscellaneous Application No.363 of 1953 and the Nazir of the District Court was appointed as his Guardian. The Nazir of the District Court, Pune as the Guardian of Mr. Dinkar Balkrishna Vaidya obtained a final decree on 26.06.1955 and seeking execution of the said final decree filed Special Darkhast No.291 of 1965 wherein the Executing Court auctioned the said property which was held as mortgaged property. In the said auction, the Nazir of the District Court, Pune on behalf of the Decree Holder as his Guardian gave the highest bid and purchased the said property; the sale was duly confirmed by the District Court and Sale certificate dated 19.12.1957 was issued in the name of Nazir of the District Court, Pune for and on behalf of Dinkar Balkrishna Vaidya. Possession of the said property was taken over by the Nazir of the District Court, Pune through the Court.

6.6. However since the said property was occupied by tenants and sub-tenants namely Shankar Godaji Gore, Smt. Thakur and Smt. Sarde, the Nazir of the District Court, Pune for and on behalf of Dinkar Balkrishna Vaidya filed two Suits against the tenants and the sub-tenants in the Court of Small Causes, Pune for possession and recovery of rent being Civil Suit Nos.1139 of 1965 and 1142 of 1965. Both the Suits were decreed by the Court of Small Causes, Pune for possession and arrears of rent on 05.11.1968 and 27.11.1968 respectively. The tenants / sub-tenants filed separate Appeals in the Court of District

Judge, Pune. The Appeal filed by Mr. Sardar Biwalkar was allowed to be withdrawn unconditionally. However, the Appeal filed by the sub-tenants Smt. Thakur and Smt. Sarde was allowed on 31.07.1972 and the decree passed in Special Civil Suit No.1142 of 1965 by the Small Causes Court was set aside. The order of Appeal Court was challenged in this Court by the Nazir of the District Court, Pune on behalf of Dinkar Balkrishna Vaidya by filing Civil Application No.242 of 1973.

6.7. On 11.09.1973, Dinkar Balkrishna Vaidya expired and his legal heirs and representatives were brought on record. The Special Civil Application filed by the Nazir of the District Court, Pune on behalf of Dinkar Balkrishna Vaidya and later on prosecuted by his legal heirs and representatives was allowed by this Court on 15.07.1980 and the judgement and decree of Civil Court in Appeal was set aside while confirming and upholding the decree of possession passed by the Small Causes Court.

6.8. Record shows that Dinkar Balkrishna Vaidya's wife had predeceased him and he was survived by two sons namely Narayan and Vasudeo and two daughters namely Shashikala Patankar and Sushama Bapat. Record further shows that Narayan the eldest son of Mr. Dinkar Balkrishna Vaidya was missing since 09.02.1973 and under the law was deemed to have died after seven years. One of the daughter namely Shashikala Patankar expired on 25.12.1973 leaving

behind two daughters namely Asha Patankar and Veena Patankar and son Amar. Respondent No.2 in the present Writ Petition is Asha Patankar, daughter of Shashikala. Record further shows that Sushama Bapat the other daughter of Dinkar Balkrishna Vaidya was entitled to 1/12th undivided share in the entire estate owned and belonging to late Dinkar Balkrishna Vaidya of which she has already taken the possession as per arrangement agreed before the District Court.

6.9. In the above background, three children of Shashikala Patankar who were grandchildren of Dinkar Balkrishna Vaidya entitled to 1/12th undivided share in the estate of late Dinkar Balkrishna Vaidya remained. At this time Vasudeo made Application to the District Court, Pune to deliver possession of the estate to him. Learned District Court informed Vasudeo that all legal heirs should jointly submit Application determining their shares in the estate.

6.10. Accordingly Vasudeo (son), Ms. Sushama Bapat (daughter) and children of Shashikala Patanakar namely Asha, Veena and Amar through their Guardian Sadashiv Patankar (her husband) submitted Application determining their respective shares in the estate of late Dinkar Balkrishna Vaidya to the District Court. In the said Application which was filed, daughter Sushama Bapat sought relief that all movables / ornaments in the custody of the Nazir of the District Court, Pune be delivered to her in lieu of her share in the entire estate; on

behalf of Shashikala Patankar namely Asha, Veena and Amar through their father and natural Guardian namely Sadashiv Patankar (husband of Shashikala) prayed for certain immovable properties as and by way of their share in the estate of the grandfather. Vasudeo's application was for the balance immovable properties. After considering the Application filed Vasudeo Sushama and children of Shashikala, the learned District Court passed an appropriate order allowing the joint Application and granting the estate to Sushama Bapat, legal heirs of Sashikala Patnakar and Vasudeo. It is seen that Vasudeo expired on 01.04.1981 before possession of the balance estate was delivered to him. Since Sushama Bapat was the only legal heir and representative of late Dinkar Balkrishna Vaidya. Record shows that pursuant to the Agreement arrived at between the parties earlier the Nazir of the District Court, Pune acted upon the order and delivered the shares in the properties to the three branches. It is further seen that three years prior to the demise of Vasudeo, Vasudeo by Visar Pavati dated 12.07.1978 had agreed to sell some part and portion of the said estate which was in his possession and which was allotted to him as his share for a price of Rs.1,00,000/- and pursuant to the same executed Agreement for Sale dated 09.03.1981 just prior to his demise.

6.11. It is seen that said Vasudeo Dinkar Vaidya died intestate on 01.04.1981 leaving behind him his sister Sushama Bapat as his only legal heir. Petitioner represented by Mr. Kanhaiyalal Motilal Talera,

the purchaser of the said premises reminded Sushama Bapat about the Agreement for Sale and called upon her to apply for necessary permission for transfer the Suit premises and execute the conveyance of the said premises to him. However Sushama Bapat did not take any steps forcing Mr. Kanhaiyalal Motilal Talera to file a suit for specific performance of the Agreement for Sale dated 09.03.1981 in the Court of Civil Judge, Pune against Smt. Sushama Bapat (Daughter of Dinkar Balkrishna Vaidya) and the Nazir of the District Court, Pune (Manager of the estate of Dinkar Balkrishna Vaidya).

6.12. Record shows that the said Civil Suit No.487 of 1981 was compromised and Defendant No.1 in the said Suit namely Sushama Bapat entered into a registered sale deed with M/s. Mohini Resorts Private Limited (Petitioner herein been the nominee of Shri Kanhaiyalal Motilal Talera) and Sale Deed was executed between the parties with Mr. Kanhaiyalal Motilal Talera being the consenting party. By virtue of the Sale Deed, right to file execution proceedings and continuing the execution proceedings against the sub-tenants of the said property with respect to enforcing the decree passed by the Small Causes Court in Suit Nos.1139 of 1965 and 1142 of 1965 which was upheld by this Court was given to the Petitioner. Copy of the Sale Deed dated 07.02.1991 is appended at Exhibit-A to the Petition.

6.13. In the Application which is filed by Respondent No.2 before Executing Court it is alleged that when Special Civil Suit No.487 of 1981 was compromised by Respondent No.2's aunt Sushama Bapat and Nazir of the District Court, Pune at that time, in view of the family arrangement which was arrived at between Vasudeo Vaidya, Sushama Bapat and children of Shashikala Patankar (including the Petitioner herein) through their father and natural Guardian Sadashiv Patankar, the Nazir of the District Court, Pune made an Application seeking deletion of the names of Asha Nagarkar, Veena Patankar and Amar Patankar from the Darkhast proceedings.

6.14. It is stated that this Application filed by Nazir of the District Court, Pune below Exhibit-22 in Darkhast proceeding was allowed by the District Court on 15.09.1982 and accordingly the names of the legal heirs of Shashikala Patankar were deleted. This order is still in subsistence and not challenged by any party.

6.15. Accordingly in view of the above proceedings, Petitioner namely M/s. Mohini Resorts Private Limited filed Application below Exhibit-6 in Darkhast proceeding namely No.1032 of 1980 in the Small Causes Court seeking appropriate relief and then took steps to execute the decrees and file further Application below Exhibit-87 wherein common order in the aforesaid two Applications below Exhibits-6 and 87 directing impleadment of the Decree Holder and issuance of

possession warrant under Order XXI Rule 35 of the Code of Civil Procedure, 1908 (for short 'CPC').

7. Mr. Thorat would submit that the Suit property is still occupied by several occupants unauthorisedly who repeatedly filed various proceedings to stall execution and the possession warrant. In the above background, Respondent No.2 (Asha Patankar) through her CA being daughter of Shashikala Patankar filed Application below Exhibit-295 in the aforesaid pending Darkhast proceedings being prosecuted by the Petitioner. Mr. Thorat would submit that if the aforesaid timeline and events are seen by the Court, Respondent No.2 has no independent right whatsoever in the suit property of which execution is sought. He would submit that the strongest ground being that on behalf of Respondent No.2, her father and natural guardian Sadashiv Patankar legally and duly represented the interest of the children of Shashikala Patankar and has accordingly 2 immovable properties received under the arrangement by virtue of the order passed by District Court.

7.1. He would submit in so far as the right of the Petitioner is concerned, it is *qua* the property which was agreed to be sold by Vasudeo Vaidya to Kanhaiyalal Motilal Talera and both daughters of Dinkar Bhaskar Vaidya namely Sushama Bapat and legal heirs of Shashikala Patankar did not have any right, title and interest therein.

He would submit that Petitioner – Asha Nagarkar (alias Asha Patankar) was a minor at that time and duly represented by her father Sadashiv Patankar and in the Court settlement which transpired had received possession of plot admeasuring 5500 sq.ft built up area situated at CTS No.934 / 935 out of final plot No.318-319 of village Bhamburda (Shivaji Nagar) alongwith possession of another plot admeasuring 260 sq.mtr. situated at CTS No.74A New Municipal No.103A Shukarwar Peth, Pune which is specifically mentioned in her own third party Application filed below Exhibit-295 by Respondent No.2 herself. Hence, Mr. Thorat would submit that if this is the position, Respondent No.2 would have no *locus standi* whatsoever to maintain the Application below Exhibit-295 and intervene in the property which came to the share of Vasudeo.

7.2. He would submit that the learned Judge of the Executing Court has passed the impugned order on the misconceived and misplaced premise that Asha Patankar is daughter of Shashikala Patankar and she is one of the legal heir having right in the suit property of which execution has been sought without adhering to the aforesaid facts and the order passed by the District Court distributing the properties tot he 3 branches as per their joint Application. He would submit that in view of the aforesaid fact, Respondent No.2 would have no legal right whatsoever to contest the execution proceedings and her impleadment on the grounds returned in the

impugned order are completely unwarranted for as she cannot be held to be a Decree Holder in the Execution proceedings at all. Hence he would seek setting aside of the impugned order.

8. *PER CONTRA*, Mr. Patil, learned Advocate appearing on behalf of Respondent No.2, the main contesting Respondent would submit that the names of the Respondent No.2 and her brother and sister were added as decree holder after the death of Dinkar in the said Execution Proceedings bearing No.1032 of 1980. He would submit that their names came to be deleted on the Application made by the Nazir of the Civil Court by order dated 15.09.1982 on the say of the Nazir that in pursuance of the joint family settlement arrived at between the parties under Court's order dated 27.05.1982. He would submit that the said Application was allowed by a one word order "Allowed" on 15.09.1982 without assigning any reasons and without issuing notice to the Respondent No.2 and her brother and sister and without ascertaining as to whether the family settlement has been fully acted upon by the parties.

8.1. He would submit that that the record of the Court clearly indicates that the family settlement/partition has not been fully acted upon and possession of only one property was received by the Respondent No.2 and her brother and sister from the Nazir. He would submit that the Executing Court has allowed the application on the

basis that it *prima facie* appears that the family partition/settlement has not been fully acted upon and partition had not taken place by metes and bound and the controversy will have to be decided by the Executing Court.

8.2. He would submit that the fact that the family partition has not been fully acted upon and the actual partition by metes and bounds has not been done is admitted by second Respondent's Aunts Vidya alias Sushama Bapat in paragraph No.3 of the Sale Deed dated 23.10.1986, which is annexed at Page No.26 of the written submissions of the Petitioner.

8.3. He would submit that that by virtue of provisions of Section 47 and more particularly sub-Section 3 of Section 47 the question as to whether any person is or is not the representative of a party shall be determined by the Executing Court. He would submit that similarly, by virtue of *proviso* to Order XXI Rule 16 of the CPC the Application has to be decided by the executing Court after conducting an inquiry.

8.4. He would submit that in the instant case, the Executing Court has not finally determined as to whether the Respondent No.2 and her brother and sister have any interest in the Decree or whether they are representative of the original Decree Holder and this question is clearly kept open by the Executing Court for final adjudication. He would submit that in these circumstances the interference by this

Court against mere impleadment is not warranted.

8.5. He would submit that the Executing Court while conducting inquiry under Section 47 and Order XXI Rule 16 of the CPC shall decide the dispute between the persons who claim interest in the Decree either by virtue of assignment of decree or as a representative of the original decree holder. He would submit that in such inquiry, the Executing Court does not go beyond the decree and/or does not decide any issues between the original parties in the suit in which decree is passed by the Court.

8.6. In support of his aforesaid submissions, he would refer to and rely upon the judgement of the Supreme Court in the case of *Gangabai Gopaldas Mohata vs. Fulchand and Others*¹ and more particularly paragraph Nos. 7 to 9 thereof.

8.7. On the basis of the above he would submit that Respondent No.2 is a proper and necessary party to the execution proceedings.

9. I have heard Mr. Thorat, learned Senior Advocate for Petitioner and Mr. Patil, learned Advocate for Respondent No.2 and with their able assistance perused the record of the case. Submissions made by the learned Advocates have received due consideration of this Court.

¹ (1997) 10 SCC 387.

10. On the face of record there are three things which *prima facie* come to the fore. Firstly, admittedly in the Application filed by Respondent No.2 below Exhibit-295 she herself has fairly stated that she has been recipient of two plots of land under the family arrangement before the District Court, but it is argued before me that her branch has received only one property from the Nazir of the District Court. This will however be a separate cause of action. Secondly, it is seen that the Decree which has been executed by Petitioner before the Executing Court is obtained by virtue of transaction with Vasudeo Vaidya and therefore there is no direct nexus whatsoever of Shashikala Patankar (mother of Respondent No.2) or any other branch with respect to the same. Thirdly it is seen that right, title and interest of Respondent No.2 was duly represented by her father Sadashiv Patankar before the District Court when the joint family arrangement was worked out and allowed by order dated 27.05.1982 and the Suit property came to the share of Vasudeo.

11. Therefore in view of the aforesaid three *prima facie* issues which are undisputed nexus of the Respondent No.2 with the Suit property in Execution proceedings and Suit filed by Petitioner is not established at all. It is *prima facie* seen that the joint family arrangement is not disputed by Respondent No.2 as also by the learned Trial Court. It is seen that right, title and interest of Sushama Bapat and Shashikala Patankar both daughters of Dinkar Balkrishan Vaidya

who were duly represented were determined before the District Court and in so far as right of the Petitioner is concerned, it flows from the transactional Agreement with Vasudeo Vaidya only which was decreed.

12. Though it is vaguely submitted that partition by *metes and bounds* did not take place, the family arrangement which was agreed to by the three surviving branches of Dinkar Balkrishna Vaidya have been duly fructified as per their wishes and Application and appropriate order has been passed by the learned Trial Court. Once this is the position, the Executing Court cannot go beyond that decree which is settled law.

13. The *locus standi* of Asha Patankar who is the daughter of Shashikala Patankar to claim right, title and entitlement in the property which was allotted to the branch of Vasudeo Vaidya is not established at all. Once segregation of rights has taken place in the presence of the Court and with mutual consent under the orders of the Court, it is the will of the parties which prevails and therefore the submission advanced on behalf of Asha Patankar that partition did not take place by *metes and bounds* cannot be accepted by the Court as a ground for Respondent No.2's intervention in the *lis* between Petitioner and legal heirs of Vasudeo.

14. The parties have enjoyed the properties and share in the estate coming to their share for a long period of time during which the

parties namely Respondent No.2 did not take objection whatsoever. It is seen that judgement and decree which has been passed in favour of Dinkar Balkrishna Vaidya has been confirmed right upto the Supreme Court pursuant to which in Execution proceedings, the three branches namely Vasudeo Vaidya, Sushama Bapat and Shashikala Patankar were duly represented before the Court and in the said Execution proceedings, the three branches themselves on their own volition accepted the properties according to their applications coming to their respective shares accordingly.

15. In fact this is a case where both the daughters namely Sushama Bapat and Shashikala Patankar (represented by her husband and natural Guardian of children) on their own volition and Application made before the District Court accepted the properties according to their choice and after receiving and enjoying the said properties for over a period of more than four decades, now an Application filed below Exhibit-295 is filed by Asha Patankar to add her as a Decree Holder in the lis between Petitioner and Vasudeo cannot be permitted. The right in the subject property which is the subject matter of Execution belongs to the branch of Vasudeo Vaidya who is the brother of Shashikala Patankar and therefore Respondent No.2 has no right, title or interest therein.

16. In view of the above observations and findings, the impugned order dated 07.06.2017 passed by the learned Judge, Small Causes Court, Pune below Exhibit-295 in Darkhast No.1032 of 1980 is clearly unsustainable in law. The same is therefore quashed and set aside.

17. Writ Petition stands allowed in terms of prayer clause (a).

18. No costs.

19. Writ Petition is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

20. After this judgment is pronounced in the Court, Mr. Patil, learned Advocate for Respondent No.2 would persuade the Court to stay the judgement to test its validity and legality before the Supreme Court. However, in view of the strong reasons which have been stated in the aforesaid judgement, the request made by Mr. Patil stands declined.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

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by HARSHADA
HANUMANT
SAWANT
Date: 2026.01.05
12:23:28 +0530