
(2019) 03 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 1468 Of 2017

Abdul Shahid

APPELLANT

Vs

Rameshwaridevi

RESPONDENT

Date of Decision : 04-03-2019

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 16
Constitution Of India, 1950 — Article 215

Citation : (2019) 2 BCR 599

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : M.M. Agnihotri, Rohit Joshi

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.
2. The present writ petition arises out of execution proceedings initiated by the petitioner wherein, by the impugned order, the Court of Additional Judge, Small Causes Court, Nagpur (trial Court), has rejected an application at Exh.51 filed on behalf of the petitioner. By the said application, the petitioner had prayed for issuance of possession warrant along with police aid for taking possession of property in terms of decree passed in his favour.
3. The petitioner (original plaintiff) purchased immovable property admeasuring 5149 sq. ft. consisting of a plot and a small structure constructed thereon at Jalalpura, Nagpur, by registered sale deed dated 08.11.1995. In the year 1999, the respondent (original defendant in the present proceedings) had filed a suit bearing Regular Civil Suit No. 1956 of 1999 for declaration and permanent injunction against the petitioner in respect of the said property claiming that her husband had been inducted as a tenant in the said premises for a period of five years and that she had continued in possession thereof. In the said suit, the

respondent had raised many issues, including her right to continue as a tenant in the suit premises after the demise of her husband, the aforesaid sale deed dated 08.11.1995 executed in favour of the petitioner as being fabricated and illegal, claiming declarations to that effect and also a decree of permanent injunction not to be dispossessed from the said property. In the said suit, the petitioner and others being defendants, had moved an application for temporary injunction, making a prayer that the respondent be restrained from obstructing and interfering in construction activity proposed to be undertaken by the petitioner and other defendants on the said property. The said application was granted by the Court with a specific direction to the petitioner and other defendants not to disturb possession of the respondent in an area of 700 sq.ft. in the aforesaid plot admeasuring 5149 sq.ft., which was in possession of the respondent.

4. On 06.03.2007, the Court of 7th Joint Civil Judge, Junior Division, Nagpur, dismissed the suit filed by the respondent giving specific findings that the respondent was not entitled to continue in possession of the said property after the demise of her husband and that she had failed to prove that the aforesaid sale deed dated 08.11.1995 was fabricated or illegal. The Court also gave findings against the respondent on the question of threats given by the petitioner of dispossessing her and the declaration and permanent injunction as sought by her. The said judgment and order passed by the Court against the respondent dismissing her suit attained finality.

5. Thereafter, on 17.10.2007, the petitioner filed suit for ejectment, possession and for perpetual injunction against the respondent before the Court of Small Causes, Nagpur, under Section 16 of the Maharashtra Rent Control Act, 1999. The suit property was specifically stated to be the aforesaid 5149 sq. ft. of land situated at Jalalpura, Nagpur. In the schedule of property, the four boundaries and other details of the suit property were stated. The petitioner prayed for ejectment of the respondent from the structure admeasuring 700 sq.ft. situated on the aforesaid plot of land, which was in possession of the respondent and he also prayed for grant of perpetual injunction restraining her from undertaking any construction activity of a permanent nature in the suit premises. The respondent in her written statement stated that she was in possession of the aforesaid structure admeasuring 700 sq.ft. in the suit premises and she resisted the prayers made on behalf of the petitioner. The Court of Additional Judge, Small Causes Court, Nagpur, by judgment and order dated 23.04.2009, partly decreed the suit of the petitioner and directed her to hand over possession of 700 sq.ft. in her possession in the suit property. She was also directed to pay amounts towards arrears of rent to the petitioner.

6. Aggrieved by the same, the respondent filed Regular Civil Appeal No. 345 of 2009 before the District Court at Nagpur. By judgment and order dated 21.10.2011, the aforesaid Court allowed the appeal and set aside the decree passed in favour of the petitioner, only on the ground that even though the findings of the Small Causes Court on merits were sustainable, the said Court

had no jurisdiction to entertain and decide the suit. The said judgment and order was challenged by the petitioner by filing Writ Petition No. 3098 of 2013, before this Court, which was allowed by judgment and order dated 03.02.2014 passed by this Court. The said order of the appellate Court was set aside and the matter was remanded back to the appellate Court for the appeal to be decided on merits. On 25.07.2014, the said appellate Court dismissed the appeal of the respondent, thereby confirming the decree passed by the Small Causes Court against her. The said judgment and order of the appellate Court was made subject matter of challenge before this Court by the respondent by filing Writ Petition No. 6674 of 2014. The said writ petition was dismissed by this Court by judgment and order dated 16.07.2015. Therefore, the decree passed by the trial Court in favour of the petitioner stood confirmed.

7. The petitioner had initiated execution proceedings before the Executing Court by filing Special Darkhast No.140 of 2014 and after the decree of the Small Causes Court was confirmed by dismissal of writ petition by this Court, an application was moved on behalf of the petitioner for execution of the decree and handing over of possession of the suit property admeasuring 5149 sq.ft. bearing house no. 555 in Jalalpura, Nagpur, by issuance of warrant to be executed against the respondent. It is the case of the petitioner that the respondent resisted execution of the said warrant and she obstructed the same through her son and about 150 to 200 people who gathered at the suit property. It is relevant that while dismissing the aforesaid Writ Petition No. 6674 of 2014, this Court had directed the respondent to file usual undertaking to vacate the suit premises by 31.09.2015. Such an undertaking dated 12.08.2015 was indeed filed before this Court.

8. As the respondent resisted the execution of warrant of possession, the petitioner filed Contempt Petition No.24 of 2016 before this Court. On 29.07.2016, this Court passed an order in the said contempt petition recording that the respondent was willing to hand over possession of 700 sq.ft. of land and structure thereon. This Court appointed Court Commissioner to ensure that the possession was indeed handed over by the respondent. The contempt petition was directed to be listed for further consideration on 20.09.2016. The Court Commissioner submitted a report dated 19.09.2016 in the aforesaid contempt petition, recording that the respondent handed over possession of 700 sq.ft. land along with structure out of the land admeasuring 5149 sq.ft. to the petitioner and that certain household items removed from the structure were kept on adjacent portion in the open plot of the petitioner in a temporary tin shed.

9. On 27.01.2017, the petitioner pointed out to this Court that although the respondent handed over possession of 700 sq.ft. of land and the structure to the petitioner, she had illegally shifted her belongings to the remaining portion of the suit plot admeasuring 5149 sq.ft. and that she was creating mischief. This Court found that the nature of submissions being made on behalf of the respondent could be appropriately examined by the executing Court and, therefore, this

Court directed that the executing Court shall expedite the matter and ensure that the decree was executed. It is in pursuance of the said observations made by this Court in the contempt petition that the petitioner filed the application at Exh.51 praying for issuance of possession warrant along with the grant of police aid. Said application at Exh.51 has been rejected by the executing Court by the impugned order dated 15.02.2017, by holding that nothing survives in the execution proceedings after the Commissioner submitted in his report that the possession of 700 sq.ft. area had been handed over by the respondent to the petitioner. The petitioner filed the present writ petition challenging the impugned order, wherein this Court issued notice on 10.03.2017.

10. Thereafter, the contempt petition was listed before this Court on 30.11.2017, wherein it was found by this Court that proceedings under the Contempt of Courts Act, 1971 and under Article 215 of the Constitution of India were required to be initiated against the respondent because the respondent prima facie had not adhered to the undertaking given to this Court. Accordingly, Rule was granted and notice was directed to be issued to the respondent in Form-I of the Rules regulating the procedure for contempt proceedings. The respondent was directed to remain present before this Court on 19.12.2017. The respondent challenged the said order passed by this Court in the contempt petition, by filing a contempt appeal before the Division Bench of this Court. On 06.03.2018, the Division Bench of this Court admitted the contempt appeal and granted stay of the aforesaid order dated 30.11.2017 passed in the contempt petition. It was clarified by the Division Bench that in the contempt appeal, the Division Bench of this Court was concerned only with the issue as to whether the learned Single Judge of this Court was correct in prima facie finding that the appellant had committed breach of undertaking or not. It was further clarified by the Division Bench of this Court in the contempt appeal that it had not made any observations with regard to claim over the remaining portion of the said land and the parties would be at liberty to agitate their right over the said part of land in accordance with law. The contempt appeal is pending before the Division Bench of this Court. As a consequence of the aforesaid clarification given by the Division Bench of this Court in the order dated 06.03.2018, the counsel for the rival parties in this writ petition have addressed this Court on the correctness or otherwise of the impugned order dated 15.02.2017, passed by the executing Court.

11. Mr. M.M. Agnihotri, learned counsel appearing for the petitioner submitted that a proper appreciation of the judgment and order passed against the respondent in Regular Civil Suit No. 1956 of 1999 initiated by her and the judgment and order passed in favour of the petitioner in the suit filed by him bearing Regular Civil Suit No. 386 of 2007, would show that the executing Court in the present case was not justified in holding that upon handing over of possession of 700 sq.ft. of land out of 5149 sq.ft. of land, which was subject matter of the suit filed by the petitioner, nothing survived in the execution proceedings. It was submitted that the petitioner had specifically described the

suit property in the suit filed by him against the respondent as 5149 sq.ft. of land bearing house no. 555 at Jalalpura, Nagpur and the four boundaries of the said property had been specifically stated in the schedule of property appended to the plaint. In the suit that had been earlier filed by the respondent, it had come on record that although her husband had been inducted as tenant of 5149 sq.ft. of the said land for a period of five years, after his demise the respondent no longer continued in possession of the same as a tenant and that factually she was found to be in possession of only 700 sq.ft. of land and the structure thereon. Yet, she had been creating difficulties for the petitioner in undertaking construction on the remaining portion of 5149 sq.ft. of land and, therefore, an application for temporary injunction had been moved by the petitioner in the suit filed by the respondent, wherein such temporary injunction was granted and the respondent was restrained from obstructing the petitioner and interfering with construction activity on the said piece of land admeasuring 5149 sq.ft., subject to the possession of the respondent in 700 sq.ft. within the said land of the respondent not being disturbed. According to the learned counsel, the prayer in the suit filed by the petitioner for ejection, possession and perpetual injunction was framed in that context. It was further emphasized that in the written statement filed on behalf of the respondent, it was specifically stated that the respondent was in possession of only 700 sq.ft. of land and the structure standing thereon, although the story of her husband being inducted as a tenant in the entire suit plot admeasuring 5149 sq.ft. was repeated and submissions were made seeking to raise issues that had already attained finality in the suit filed by her. According to the learned counsel, in that context, the decree passed by the Small Causes Court in the present case in favour of the petitioner directed that the respondent shall hand over possession of land admeasuring 700 sq.ft. situated in Corporation House No.555 at Jalalpura, Nagpur. It was submitted that when the respondent herself had stated that she was in possession of only 700 sq.ft. of land out of 5149 sq.ft. , the decree was passed in that context.

12. It was further submitted that the said decree had been confirmed upto this Court and that a perusal of the judgments and orders passed in favour of the petitioner by the Small Causes Court, the appellate Court and this Court read with the reports of the Court Commissioner dated 19.04.2016 and 19.09.2016 would show that while the suit plot was given house no.555, the structure of 700 sq.ft. existing thereupon was given house no.556 by the Municipal Authorities, only for taxation purposes. It was submitted that the respondent was deliberately creating confusion on the basis of the two house numbers given by the Municipal Authorities and it was wrongly being claimed that upon handing over of possession of 700 sq.ft. of the structure and the land beneath the same, under the threat of contempt, the decree had been fully satisfied and that the petitioner could not raise any grievance about the respondent continuing in possession of any portion of the remaining part of the suit plot. It was submitted that it would be a travesty of justice if the stand taken by the respondent, and accepted by the executing Court by the impugned order, is sustained, because

the petitioner has been deprived of the relief that he was entitled and granted by the Courts below and confirmed upto this Court. It was submitted that if the contentions raised on behalf of the respondent were to be accepted, the relief granted in favour of the petitioner would stand frustrated and it would encourage litigants like the respondent to keep on illegally squatting on the property of other citizens by raising objections that would render the whole exercise of approaching the Court by plaintiffs and decrees being granted and confirmed by the higher Courts. The learned counsel relied upon judgment of the Hon'ble Supreme Court in the case of Meenakshi Saxena .vs. ECGC Ltd - (2018) 7 Supreme Court Cases 479 in support of the proposition that, although the executing Court cannot go beyond the decree, but the said Court has a bounden duty to interpret the decree and in the process to give true effect to the decree passed in favour of the decree holder.

13. Per contra, Mr. Rohit Joshi, learned counsel appearing for the respondent submitted that a perusal of the decree granted by the Small Causes Court in the present case would show that a direction was given to the respondent only to hand over peaceful and vacant possession of 700 sq.ft. of land situated in Corporation House No.555, Jalalpura, Nagpur and that this very decree stood confirmed right upto this Court. It was submitted that when the writ petition filed by the respondent was dismissed by judgment and order dated 16.07.2015, the respondent had filed an undertaking in terms of the decree that was confirmed against her. It was submitted that a perusal of the report of the Court Commissioner dated 19.09.2016, would show that the respondent had indeed handed over possession of 700 sq.ft. of structure and the land beneath it from 5149 sq.ft. of land and that, therefore, the undertaking given by the respondent in terms of the decree stood satisfied. On this basis, it was submitted that the executing Court had correctly held that when the decree and the undertaking stood satisfied, nothing survived in the execution proceedings and that the petitioner was not entitled to claim warrant of possession and police aid for taking possession from the respondent for any portion of land beyond 700 sq.ft., with the structure standing thereupon.

14. The learned counsel for the respondent also sought to rely upon rental agreement dated 17.12.1952 (Exh.26) that was executed in favour of her husband when he was inducted as tenant for a period of five years, in the suit premises, claiming that the said agreement demonstrated that her husband was in possession of land beyond 700 sq.ft.. On this basis, it was contended that the respondent was entitled to continue in possession of part of remaining portion of the land admeasuring 5149 sq.ft. and that she could not be dispossessed from the same in the process of executing decree granted in favour of the petitioner in the present proceedings. It was further contended that when the movables and articles were removed by the respondent while handing over possession of 700 sq.ft. of land to the petitioner, she had kept them on adjacent portion and the petitioner had not objected to the same because he was aware that the respondent was in possession of more than 700 sq.ft. of land. It was contended

that as per the rental agreement dated 17.12.1952 her husband had been granted possession of 1760 sq.ft. of land and, therefore, the petitioner was not entitled to dispossess the respondent from the remaining portion under the garb of executing the aforesaid decree, which already stood satisfied, as correctly held by the executing Court in the impugned order.

The learned counsel for the respondent also argued that principle of res judicata would apply in the present case because the findings rendered by this Court in the writ petition filed by the respondent read with the nature of decree granted by the Court below, demonstrated that upon possession of 700 sq.ft. of land and structure thereupon being handed over to the petitioner, the decree stood satisfied and the executing Court was justified in holding in the impugned order that nothing survived for execution in the present case. It was submitted that the principle of res judicata applies to two stages in the same litigation or in a subsequent stage of the same proceeding. Reliance was placed on judgments of the Hon'ble Supreme Court in the case of Y.B.Patil .vs. Y.L.Patil - AIR 1977 Supreme Court 392 and U.P. State Road Transport Corporation .vs. State of U.P. - AIR 2005 Supreme Court 446.

15. Heard counsel for the parties and perused the record.

16. The main issue that needs to be decided in the present case is, as to whether the executing Court was justified in holding in the impugned order that nothing survived for execution, in view of the fact that 700 sq.ft. of land and structure standing thereupon was already handed over to the petitioner in full satisfaction of the decree granted by the Small Causes Court, which was confirmed upto this Court. In order to decide the said issue, it would be necessary to peruse the nature of pleadings on record and the decree passed in favour of the petitioner in that context. A perusal of the plaint filed on behalf of the petitioner in the suit for eviction and possession, shows that the petitioner had specifically stated the suit property to be immovable property bearing house no.555, Jalalpura, Nagpur admeasuring 5149 sq.ft. along with structure standing on the said land. The schedule of property filed along with the plaint reads as follows:-

"SCHEDULE OF PROPERTY

All that piece and parcel of House bearing No.1012 (Old), (New-555) situated at Mouza - Nagpur, Ward No.30 (Old), 39 (New), City Survey No.530, Sheet No.14/92, Near Chitra Talkies, Jalalpura, Nagpur, area admeasuring about 5149 sq.t. along with the structure standing on the said land, within the limits of NIT & NMC, Tah. & Dist. Nagpur and the said property is bounded as under: -

On the East - Road,

On the West - House of Shri Mahakalkar

On the North - Lane and House of Shri Samurdrawar and Jabalpure On the South - Road."

17. In the written statement filed on behalf of the respondent, it was admitted that she was in possession of 700 sq.ft. of land and the structure standing thereon, although it was also pleaded that open land was given to her husband in the capacity of a tenant before the petitioner purchased the suit property on 08.11.1995. It was stated that the aforesaid structure was house no. 556 and not house no.555 as claimed by the petitioner. The said pleadings were taken note of by the Small Causes Court while passing judgment and decree dated 23.04.2009. In that context, issues were decided by the trial Court and it was found that the respondent had admitted in clear words that she was tenant and in possession of house structure admeasuring 700 sq.ft. on the suit land. The trial Court also noted that the respondent had further taken inconsistent plea that her husband had been inducted in open land, but in view of her clear admissions, the trial Court proceeded on the basis that the respondent was in possession of 700 sq.ft. out of the suit land. It was in this context that the trial Court granted decree in favour of the petitioner which reads as follows:-

"ORDER

(i) Suit is partly decreed with costs.

(ii) Defendant is directed to hand over peaceful and vacant possession of suit property admeasuring 700 sq.ft. situated in Corporation House No.555, Ward No.30, Jalalpura Road, Nagpur to the plaintiff within two month from the date of order.

(iii) Defendant is further directed to pay amount of Rs.936/- towards arrears of rent for 3 years to the plaintiff within two months from the date of order.

(iv) The relief of perpetual injunction is rejected.

(v) Decree be drawn up accordingly."

18. This very decree was confirmed by the appellate Court in its judgment and order dated 25.07.2014 and the operative part of the said order reads as follows:-

"ORDER

(i) Appeal is dismissed with cost.

(ii) The appellant/defendant is directed to deliver the possession of the land admeasuring 700 sq.ft. situated in Corporation House No.555, City Survey No.530, Sheet No.14/192, situated at Jalalpura, near Chitra talkies, Nagpur, within three month, after removing the structure over it.

(iii) In case of failure of the defendant to remove the structure and deliver the possession of land after the aforesaid period, the plaintiff is at liberty to get it removed and take possession of the land at the cost of defendant through the process of Court.

(iv) R & P be returned to the trial Court."

19. This Court dismissed Writ Petition No. 6674 of 2014, thereby confirming the decree passed by the Courts below. While dismissing the writ petition, this Court in paragraph 13 observed as follows:-

"13. As regards the submission that the petitioner was sought to be evicted from the premises that are not subject matter of the proceedings, suffice it to observe that the decree passed by the Appellate Court is clear and it refers to possession of land admeasuring 700 sq.ft. of house no.555. In case the petitioner apprehends dispossession from a portion not covered by the decree, such grievance can be raised before the Executing Court which is competent to execute the decree as passed. Hence for aforesaid reasons, there is no case made out to interfere in writ jurisdiction. The writ petition is therefore dismissed with no order as to costs."

20. Thereafter, the respondent gave undertaking in terms of directions of this Court while dismissing writ petition by order dated 16.07.2015, in pursuance of which contempt petition was filed on the allegation of the petitioner that the said undertaking was being violated. Thereafter, the respondent did hand over possession of the aforesaid area of 700 sq.ft. from the suit land, which was recorded in the proceedings in the contempt petition. Thereafter, the contempt petition stood admitted on the issue as to whether the respondent had violated the undertaking given to this Court, but the said order passed by the learned Single Judge of this Court has been stayed in contempt appeal filed on behalf of the respondent, by the Division Bench of this Court. The contempt appeal as well as the contempt petition are pending before this Court, but pendency of the said proceedings will not come in the way of this Court while deciding the present writ petition, because in the order dated 06.03.2018 passed by Division Bench of this Court admitting the contempt appeal, it has been clearly observed that the Division Bench had not observed anything with regard to claim over the remaining open piece of land and the parties would be at liberty to agitate their right over the said piece of land in accordance with law.

21. It is in this context that the petitioner filed application Exh.51 for issuance of possession warrant along with police aid for the remaining portion of the suit land as reflected in the schedule of property filed along with the plaint. The executing Court by the impugned order has rejected the said application on the ground that the decree granted by the trial Court and confirmed upto this Court stood satisfied when the respondent handed over possession of the said area of 700 sq.ft. land to the petitioner during the pendency of the contempt petition. It needs to be examined as to whether the said view adopted by the executing court was justified.

22. To examine the said issue, it is also relevant to refer to the background in which the suit for eviction and possession was filed by the petitioner against the respondent on 17.10.2007. Prior to the said suit filed by the petitioner, the respondent had filed a suit for declaration and permanent injunction on 21.10.1999 against the petitioner claiming that the suit property admeasuring

5149 sq.ft. was Wakf property and further that her husband had been inducted as a tenant in the suit property in the year 1952 by the then owner. It was further claimed that after the death of her husband, the respondent had continued as tenant in the suit premises. It was also claimed that the sale deed dated 08.11.1995 executed in favour of the petitioner was fabricated and illegal and that the respondent was entitled for the declaration as sought and for relief of permanent injunction. It is relevant that in the said suit the petitioner and the other defendants had moved an application for temporary injunction stating that they were being deprived of enjoying the suit property and making construction thereon despite having purchased the same by a valid registered sale deed dated 08.11.1995, because the respondent was preventing them to undertake construction even on land other than 700 sq.ft. and structure thereupon that the respondent was in possession of. The said application of the petitioner and other defendants in the suit filed by the respondent was granted in following terms:-

"ORDER

1. The application of defendants is granted.
2. The plaintiff is restrained from obstructing from interfering in the construction activity which defendants proposed to undertake on the suit plot.
3. The defendants are also directed not to disturb the possession of the plaintiff i.e. Area of 700 sq.ft. which is in possession of the plaintiff.
4. No order as to costs."

23. Thereafter, the aforesaid suit for declaration and permanent injunction filed by the respondent was dismissed by the concerned Court. In the said judgment and order, the Court gave findings that the suit property was not Wakf property, that the respondent had not continued in the suit premises as a tenant after the death of her husband, that the sale deed dated 08.11.1995, executed in favour of the petitioner could not be said to be an illegal document and further that the respondent was not entitled to the declaration as sought by her and the relief of permanent injunction.

24. Thus, when the petitioner filed the suit for ejectment and possession on 17.10.2007, a competent Court had already given findings against the respondent while dismissing Regular Civil Suit No. 1956 of 1999, filed by her for declaration and permanent injunction. It is undisputed that the said findings had attained finality. In this situation, in the suit for ejectment and possession filed by the petitioner, it was specifically stated that the petitioner was owner of the suit property admeasuring 5149 sq.ft. bearing house no. 555, Jalalpura, Nagpur, wherein the aforesaid structure was standing on land admeasuring 700 sq.ft. The schedule of the property quoted above, also clearly mentions the suit property as the land admeasuring 5149 sq.ft. along with structure standing thereon with specific boundaries stated therein.

25. In response, in written statement the respondent denied that the petitioner

was owner of the property and again sought to raise questions regarding the suit property being Wakf property, despite specific finding by the competent Court against her on the said issue. But, the respondent conceded to the fact that she was a tenant in the house structure admeasuring only 700 sq.ft. in the aforesaid suit land admeasuring 5149 sq.ft. claiming that it was house no. 556 and not 555 as stated by the petitioner. Thus, the respondent conceded to the fact that out of the suit land admeasuring 5149 sq.ft., she was in possession of the structure standing on 700 sq.ft. land within the said plot. It clearly means that she neither claimed any right of possession or ownership in the balance area of land in the said plot admeasuring 5149 sq.ft. It is in this context that the trial Court passed the decree and the same stood confirmed by the appellate Court. When arguments were sought to be raised before this Court in Writ Petition No. 6674 of 2014 regarding dispossession from other portion of the land, this Court clearly observed that the executing Court was competent to go into the same.

26. In this backdrop, the petitioner had moved the executing Court for execution of the decree and grant of possession of the suit land. It has come on record that on 25.02.2015, the son of the respondent and about 150 to 200 people gathered at the suit land and obstructed the bailiff and the police force from taking possession of the suit land. This shows that the respondent was now obstructing the petitioner, despite having proceeded before the Courts below on the basis that she was in possession of only 700 sq.ft. of land within the suit land admeasuring 5149 sq.ft.. The report of the Court Commissioner submitted in the Contempt Petition No. 24 of 2016, shows that the house structure of 700 sq.ft. of land was numbered as house no. 556 and that the entire suit land/plot was allotted the number 555 in the Corporation records. It was also recorded that these house numbers were not separate property.

27. The report of the Court Commissioner dated 19.09.2016 shows that pursuant to orders passed in Contempt Petition No. 24 of 2016, the respondent handed over possession of aforesaid structure admeasuring 700 sq.ft. and that the respondent took out household items and kept them on adjacent portion of the open plot of land in a temporary tin shed. It has come on record that the respondent is now holding possession of the said tin shed along with the household items that were removed from the structure admeasuring 700 sq.ft. The said tin shed is within the suit land admeasuring 5149 sq.ft.. It is in this context that the respondent is now contending that she has a right to continue on the said portion of the suit land admeasuring 5149 sq.ft. in the tin shed since decree of possession passed in favour of the petitioner was limited to an area of 700 sq.ft. within the suit land and that the executing Court was not entitled to look into the grievance raised by the petitioner as the decree already stood satisfied. Reliance was also sought to be placed on rent agreement dated 17.12.1952 (Exh.26) to contend that the said agreement executed in favour of her husband by the erstwhile owner had resulted in possession as a tenant being at least in 1760 sq.ft. in the suit land. On this basis, it was contended that the respondent could not be dispossessed from the portion of the suit land that she

was now occupying while seeking execution of the decree passed in favour of the petitioner. It was contended that the decree being limited only to an area of 700 sq.ft. within the suit land, was clear from the finding already rendered by the Courts below and confirmed by this Court and that it operated as *res judicata* against the petitioner, thereby preventing him from seeking any further relief from the executing Court in respect of seeking dispossession of the respondent from the balance area of the suit land.

28. A proper appreciation of the pleadings of the parties on record, in the backdrop of the findings rendered against the respondent in her own suit for declaration and permanent injunction which stood dismissed, as also the nature of decree passed by the trial Court in the context of such pleadings, would show that the contentions raised on behalf of the respondent are wholly unsustainable. The parties before the Court proceeded on the basis that although the suit land was admeasuring 5149 sq.ft. , the respondent was in possession only of 700 sq.ft. of land. The respondent neither staked any claim of ownership nor possession of any portion of the balance area of the suit land. The trial Court also proceeded on this basis and passed the decree of possession in favour of the petitioner. The said decree has been confirmed upto this Court. In view of the said factual position, the respondent cannot be allowed to turn around and claim that after possession of 700 sq.ft. of land and structure thereon, that she herself had conceded of being in possession, she was entitled to occupy portion of the balance area of the suit land totally admeasuring 5149 sq.ft. and that she could not be dispossessed by the executing Court unless a new proceeding was initiated by the petitioner for the same.

29. If the contention raised on behalf of the respondent was to be accepted, it would be a travesty of justice. A judgment-debtor like the respondent herein, having suffered a decree of dispossession from the part of the suit land on the admitted position that she was not in possession of any portion of the balance area of the suit land, cannot be permitted to state that when she stands dispossessed from the only area that she herself claimed to be in possession of, she can take her movables and squat on any other area of the balance portion of the suit land and then claim protection of the law. The decree passed by the trial Court limited to area of 700 sq.ft. and the structure standing thereon in the suit land was on the basis that the respondent was never in possession of any area of the balance portion of the suit land. This was, in fact, the stated position on behalf of the respondent herself. In such a situation, it would be tragic situation that the executing court would remain a mute spectator to the respondent defeating the true purpose and object of the decree passed in favour of the decree holder i.e. the petitioner, by adopting a view that handing over of possession of 700 sq.ft. of land from the suit property amounted to full satisfaction of the decree and that nothing could be done any further. This is a classic case where a judgment debtor is abusing the process of law which has deprived the petitioner from enjoying the suit property admeasuring 5149 sq.ft. for the past more than 23 years. The executing Court completely failed to

appreciate this aspect of the matter.

30. The reliance placed on behalf of the respondent on rent agreement dated 17.12.1952 (Exh.26) executed by erstwhile owner in favour of her husband, is also misplaced and it cannot be permitted. The respondent is now claiming that she was tenant of 1760 sq.ft. of the suit land admeasuring 5149 sq.ft. on the basis of the aforesaid agreement at Exh.26 while throughout the proceedings, not only in the suit filed by the petitioner for ejectment and possession but even in the suit for declaration and permanent injunction filed in the year 1999 by the respondent herself, it was found that she was in possession of only 700 sq.ft. with structure standing thereon. The order dated 18.09.2006 passed on the application for temporary injunction filed by the petitioner and other defendants in the aforesaid suit bearing Regular Civil Suit No. 1956 of 1999, also clearly shows that the respondent was in possession only of area admeasuring 700 sq.ft. and structure standing thereon. Even in the findings rendered in the said suit filed by the respondent, it was categorically held by the competent Court that the respondent was in possession of only 700 sq.ft. of land. In such a situation, placing reliance on the aforesaid agreement at Exh.26 to claim that the respondent was in rightful possession of area beyond 700 sq.ft. of land cannot be countenanced. The respondent is seeking to defeat the rights of the petitioner that have accrued to him in terms of the proceedings that have culminated in his favour upto this Court. If the contentions raised on behalf of the respondent are to be accepted, then a fresh proceeding being initiated by the petitioner to now evict the respondent from the temporary tin shed in the suit land and upon a decree being passed in favour of the petitioner which would stand executed, all that the respondent would be required to do would be to pick up her belongings and to squat on some other portion of the balance area of the suit land. The respondent could then very well claim that although she conceded that she was in possession of only the tin shed, since the decree was limited to eviction from such area covered under the temporary tin shed, she could not be evicted or dispossessed from any other portion of the balance portion of the suit land. If such contentions and arguments raised on behalf of the respondent were to be accepted, it would amount to frustrating the decree granted in favour of the petitioner by the Court in respect of the suit land admeasuring 5149 sq.ft.

31. The respondent has deliberately sought to create confusion regarding house no.555 and 556 in the present case.

It is clear from the record that suit land admeasuring 5149 sq.ft. was allotted house no.555 and 700 sq.ft. of structure standing thereon was allotted house no.556, and that too for taxation purpose. Therefore, the contentions raised on behalf of the respondent in that regard are rejected.

32. In view of the above, it becomes clear that reliance placed by the learned counsel for the respondent on judgments of this Court in the case of Y.B.Patil .vs. Y.L.Patil - AIR 1977 and U.P. State Road Transport Corporation .vs. State of U.P. (supra) contending that the principle of res judicata would apply, is wholly

misplaced and it cannot be accepted. There is no question of the principle of res judicata applying in the present case on the basis that the decree limited to area of 700 sq.ft. granted in favour of the petitioner estopped him from seeking eviction of the respondent from the suit land admeasuring 5149 sq.ft. This Court finds that the concept of res judicata would not be applicable at all in the facts of the present case. On the other hand the learned counsel for the petitioner was justified in relying on judgment of the Hon'ble Supreme Court in the case of Meenakshi Saxena .vs. ECGC Ltd. (supra) wherein it has been held that although the executing Court cannot go beyond the decree, but it is the bounden duty of the executing Court to interpret the decree in the process of giving true effect to the decree. In the facts of the present case, a true effect to the decree can be granted only when the executing Court takes up the question of handing over of possession to the petitioner of the entire suit land admeasuring 5149 sq.ft. in the facts and circumstances of the present case.

33. In view of the above, it becomes clear that the executing Court committed a grave error in rejecting the application filed by the petitioner (Exh.51) for issuance of possession warrant along with police aid, on the ground that nothing survived after handing over of possession of 700 sq.ft. from the suit land to the petitioner.

34. Accordingly, the writ petition is allowed. The impugned order passed by the executing Court on 15.02.2017 is quashed and set aside. Consequently, the application (Exh.51) filed by the petitioner stands allowed and the executing Court shall issue possession warrant for handing over of possession of the entire balance portion of suit land to the petitioner and for removal of the respondent from the portion of the suit land that she now claims to occupy. The returnable date of possession warrant shall be fixed by the executing Court and police aid shall also be ensured by the executing Court while directing the possession warrant to be executed by the returnable date. The parties shall appear before the executing Court on 08.03.2019, whereupon the executing Court shall issue possession warrant as directed above and it shall ensure that the possession warrant as aforesaid is satisfied by the returnable date.

35. Rule made absolute in the aforesaid terms with no order as to costs.