

(1925) 03 BOM CK 0006
In the Bombay High Court
Case No : First Appeal No. 77 of 1924

Bai Lalbu

APPELLANT

Vs

Mohanlal Gokaldas Javeri

RESPONDENT

Date of Decision : 05-03-1925

Acts Referred:

Citation : AIR 1925 Bom 385 : (1925) 27 BOMLR 687

Hon'ble Judges : Norman Macleod, J;Coyajee, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—In this suit a decree for specific performance was passed against the defendant on February 26, 1923. The plaintiff did not take the necessary steps to produce the purchase money, so the defendant took out a darkhast on June 21, 1923, for payment of the purchase money in order that the matter might be completed. The plaintiff then complained that the defendant had pulled down some of the bricks out of the property in dispute with a view to causing damage to him. A commissioner was appointed, and he made a report showing the present condition of the building on November 17, 1923. The commissioner could not decide whether the defendant had caused wilful damage to the building since the date of the decree. On the report the First Class Subordinate Judge made an order that time should be given to the defendant to replace the property in the suit In the same condition as it was at the date of the suit. That being done, the plaintiff should lodge the money in Court, and the defendant should give over possession of the property to the plaintiff. No reason is given for this order. The direction that the defendant should replace the property in suit in the same condition as it wag at the date of the suit, was clearly wrong. The issue between the parties was whether the defendant, between the date of the decree and the date of the darkhast, i.e., June 21, 1923, had caused wilful damage to the property, so that on its being delivered to the plaintiff in pursuance of the decree the value would have been reduced. It is

contended that that is not a question which arises in execution, and that the plaintiff will have to file a suit to have it decided. In *Hari Shridhar Prabhu Desai Vs. Sakharam Padmanna Magdum*, it was decided by this Court that the question with regard to the waste committed by a judgment-debtor after the date of the decree is a question arising between the parties relating to the execution, discharge or satisfaction of the decree and must be determined by the Court executing the decree, and not by a separate suit. In that case it was alleged that after the decree and while the appeal was pending the defendants committed waste by cutting down trees. There does not appear to be much difference between a case where an appeal has been filed, and the party remaining in possession commits waste, and a case where possession is directed to be given by a decree, and before possession is given waste is committed. The question is really whether a successful party can be said to get possession of what was directed to be given to him by the decree, if the party in possession deliberately has caused damage to the property. There is no reason why the question of damage should not be tried in execution.

2. We think then that the appeal must be allowed and the darkhast sent back to the lower Court to decide this issue, "whether between the date of the decree and the date of the darkhast, i.e., June 21, 1923, the defendant caused wilful damage to the suit property. If that issue is found in the affirmative, then the next issue will be, "what was the extent of damage." The Court, if it finds that there has been wilful damage caused to the property by the defendant, will be entitled to direct payment, of that damage out of the purchase money due by the plaintiffs. This order should not delay the prosecution of the darkhast with regard to the payment of the purchase price and delivery of possession. We leave it to the Judge to decide whether it will be necessary to take security from the defendant if the purchase price is paid into Court, for any damage that may be found to have been caused between the date of the decree and the date of the darkhast, i. e., June 21, 1923, The appellant must get her costs in this Court. Costs in the lower Court will be costs in the darkhast