
(2004) 10 BOM CK 0103
In the Bombay High Court
Case No : Writ Petition No. 898 of 1989

Sheshrao Bolegave

APPELLANT

Vs

Shivram Patil and Others

RESPONDENT

Date of Decision : 19-10-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 85A, 88C
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 2 MhLj 1102

Hon'ble Judges : A.B. Naik, J

Bench : Single Bench

Advocate : S.V. Chandole, instructed by V.G. Sakolkar, for the Appellant; B.B. Lakhkar and S.S. Deve, instructed by A.N. Gaddime, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Naik, J.—This Petition is filed under Article 227 of the Constitution of India (for short "the Constitution") challenging the judgment and order passed by the Additional Tahsildar, Latur in File No. 1981/TNC/WS/334 decided on 12th July, 1985 answering the issue of tenancy which was referred to by the Civil Court. The said order was challenged by the present petitioner by filing an appeal before the Deputy Collector (Land Reforms), Latur in File No. 87/TNC/UDG/2 who, by his order dated 13th February, 1986, confirmed the judgment and order passed by the Tahsildar and dismissed the appeal. Both the orders passed by the Addl. Tahsildar as well as Deputy Collector, were the subject-matter of Revision before the Maharashtra Revenue Tribunal (for short "the Tribunal") u/s 91 of the Hyderabad Tenancy and Agricultural Lands Act (hereinafter referred to as "the Act"). The learned Member of the Tribunal, dismissed the Revision Application by his judgment and order dated 20th November, 1988. Thus, there are concurrent judgments of all the three authorities below, which are challenged in this Petition.

2. While hearing this petition, I have to bear in mind the parameters of the jurisdiction conferred on this Court by Article 227 of the Constitution, as

explained by the Apex Court in the case of *Ranjeetsingh v. Ravi Prakash*, 2004 Vol.3 SCC 682 and *Suryadeorai v. Ramchandra Rai* reported in 2003 (6) SCC page 675, wherein the Apex Court has held that the High Court hearing the petition filed either under Article 226 or 227 of the Constitution, cannot act like an appellate Court and re-appreciate and re-evaluate the evidence, while exercising writ of certiorari or supervisory jurisdiction. The High Court take into consideration only the patent error which does not require establishment by lengthy and complicated arguments or by long drawn process of reasoning. Keeping this in mind, I have to appreciate the contentions that are raised by Shri Chandole, learned Advocate by Shri V. G. Sakolkar, for the petitioner.

3. In this Petition, the petitioner has annexed the documents at Exh."A" collectively. But on seeing the original record which is called by this Court, it is noticed by me that these documents which the petitioner has relied, were not part and parcel of the record and the same were not before the authorities below. For the first time, in this Writ Petition those documents were annexed, that too without taking leave of this Court. Furthermore, no application was filed to take those documents on record. Hence, there is no opportunity either to the party to rebut those documents or there was no occasion for the authorities below to scrutinise those documents. For the first time, in a petition filed under Article 227 of the Constitution, this Court will not permit the party to rely on those documents. Therefore, I have to ignore those documents and, then, to appreciate the finding which has been recorded and find out whether all the three authorities have committed an error appearing on the face of the record, i.e. evidence which was before the authorities below.

4. Shri Chandole, learned Advocate for the petitioner, in the course of arguments, has placed reliance on the following judgments of this Court as well as the Apex Court to substantiate his contentions :

1) *Sau. Saraswatibai Trimbak Gaikwad Vs. Damodhar D. Motiwale and Others*, 5. These judgments are cited by the learned Advocate for the petitioner in order to challenge the reference which was made to the tenancy Court by the Civil Court (executing Court) before whom the decree in RCS No. 82/1966 is pending for execution. In order to appreciate the points raised, the facts which emerged from the record, are necessary to be noted in brief.

6. One Ramrao was the owner of land Survey Nos. 22-B, 12A, admeasuring 3G and 8A and 9G situated at village Lali Tq. Udgir Dist. Latur. The petitioner claims that he is/was the tenant of those two lands. It is contended by the petitioner that said Ramrao on 12th February, 1962 executed a Batai Patra (tenancy agreement) in his favour putting him in possession of that lands. It is the case of the petitioner that said Ramrao on 19th October, 1965 executed an agreement of sale in respect of the same lands in favour of one Shivram Amritrao Patil. The said Shivram Amritrao Patil filed Special Civil Suit No. 82/1966 for specific performance of contract and that suit was decreed by the Civil Court on 9th July, 1968. Pursuant to the decree passed, a registered sale deed came to be

executed on 19-9-1969. After execution of the sale-deed, it appears that the execution of the decree for possession was continued. In that execution, the present petitioner objected the delivery of possession. The objection that was raised by the present petitioner was objected by the decree-holder contending that the petitioner was not the tenant of lands at any time, much the less on or before 23rd June, 1966 or after 19th July, 1968. As the contention was raised, the learned executing Court hearing the Special Darkhast No. 13/71 framed the following issue :

"Whether objection petitioner Sheshrao has been introduced on the suit lands Sy. No. 22B admeasuring 13 acres 3 gts. of village Lali (Kd) Tq. Udgir or before 23-9-1966 or after 29-7-1968 P.G."

7. After framing that issue, the Civil Court has referred the same to the Tenancy Court vide order dated 22nd December, 1980. The said issue was referred by the learned executing Court in exercise of its powers conferred by Section 99(A) of the Act.

8. After the issue was received by the Tahsildar (who was competent to decide the said issue under Tenancy Act), issued notices to the parties and directed them to appear before him. Before the Tahsildar, the respondent/plaintiff has produced copy of the judgment of the Additional Tahsildar dated 22nd August, 1972; the order passed by the Tribunal on 1st November, 1976; extract of mutation entry Nos. 22 and 7/12 extract in respect of the suit lands. Besides those documents, the revenue record where there is a pencil entry in the name of the defendant (petitioner) in cultivation column for the year 1968-69 was filed. The Tahsildar opined that the pencil entry has no value, in view of the provisions of record of Rights Rules framed under the Maharashtra Land Revenue Code. However, the Tahsildar recorded the finding that "tenancy right of Sheshrao Gurappa came into effect with effect from 18th April, 1970," but he is not in possession of the land or introduced on the suit land on or before 23rd September, 1966 or after 19th July, 1968 to 17th April, 1970". Accordingly, he answered the issue.

9. Feeling aggrieved by the above order, the present petitioner preferred an appeal to the Deputy Collector (LR) Latur who by his judgment and order, held that the contention of the petitioner regarding cultivation of the suit land since 1962 is not supported by any documentary evidence on record. Consequently, held that the petitioner has not proved his possession on the suit lands and naturally dismissed the appeal by the judgment and order dated 13th February, 1986.

10. On decision of the appeal by the Deputy Collector, the petitioner moved the Tribunal. The learned Member of the Tribunal by his judgment and order dated 25th November, 1988 dismissed the Revision Application by confirming the orders passed by both the authorities below.

11. Coming to the other aspect of the litigation to which reference is required to

be made as it has bearing on the subject-matter involved. As stated above, it was contended by the petitioner that Ramrao executed a Batai patra in his favour on 12th February, 1962. Curiously enough, there is no documentary evidence produced by the petitioner to show that on the basis of Batai Patra, he was put in possession and his name is recorded in the revenue record which fact is referred by him; as it has some bearing on the contention of Shri Chandole. It appears that the petitioner filed an application to the Addl. Tahsildar, Udgir u/s 8 of the Act, claiming that he may be declared as a tenant in respect of the lands as, on the basis of Batai he is in possession and he is a tenant of the said lands. The landowner appeared, filed his consent terms by his compromise application, admitting the claim of the petitioner. Accordingly, the Tahsildar Udgir by the order dated 26th February, 1970 decreed the claim of the petitioner. The copy of the order passed by the Tahsildar on 26th February, 1970 is produced on record. The operative part of the order reads thus :

"In view of the compromise the applicant's claim of tenancy in respect of Survey No. 22B and 9B situated at village Lali (Kd) is decreed."

12. After the order was passed, it appears that the petitioner moved the Tenancy authorities and got his name mutated in the revenue record. Accordingly, the mutation was sanctioned on 17th April, 1970.

13. Before the proceeding taken by petitioner u/s 8 of the Act, the vendee-Shivram has filed Special Civil Suit No. 82/1966 for specific performance of contract of sale dated 19th October, 1965 executed by the Ramrao in his favour. The suit came to be decreed on 19th July, 1968 and the sale deed came to be executed in view of the decree on 19th June, 1969. It is also not disputed that the consent order which was passed by the Tahsildar on 26th February, 1970 was challenged by Ramrao and his heirs. In those proceedings, which were filed before the Tahsildar, a contention was raised that the Batai Patra dated 12th February, 1962 was a forged document and the order passed by the Tahsildar on 26th February, 1970 is not binding on them. Curiously enough, the Tahsildar rejected the contention holding that the application is not tenable before him. That order passed by the Tahsildar rejecting the application dated 22nd September, 1972 rejecting the application was challenged by Ramrao, Baijnath and Shivram, before the Tribunal. The Tribunal on 1st November, 1976 confirmed the order and dismissed the Revision Application rejecting the application filed by Ramrao, before the Tahsildar and Deputy Collector, on the point of jurisdiction.

14. With this backdrop of undisputed facts which are brought on record, the contentions that are advanced by Shri Chandole, learned Adv. are required to be noted. Shri Chandole, learned Adv. contended that the issue which was referred, itself, is erroneous and such an issue should not have been referred at all. He contended that the tenancy authorities have no jurisdiction to record a finding about possession of a party. He contended that at the most, the status of the present petitioner should have been referred but the Civil Court has framed such an issue which includes the question of status of the petitioner as well as to find

out whether he was in possession of the suit lands on or before 23rd September, 1966 or after 29th July, 1968. He pointed out that so far as the factum of possession, the Tenancy Court has no jurisdiction record a finding. To substantiate this contention, Shri Chandole, placed reliance on the judgment of this Court in the case of Baliram Maruti Satvekar v. Dadu Govind, 1985 Mh.L.J. 311, Shri Chandole relying on this judgment has contended that the issue regarding possession cannot be decided by the Tenancy Court. Let me consider the facts of Baliram's case (supra).

In Baliram's case (supra) the plaintiff filed a suit for injunction restraining the defendants from interfering with the possession of which he claimed to be a tenant. The defendant claimed to be in possession as purchaser of half of the land. Even though the suit was for injunction reference as regards tenancy came to be made and the Tahsildar having negatived the case of the tenancy appeal, was taken to SDO, which was dismissed. However, Revision Application before the Revenue Tribunal, at the instance of the plaintiff, was allowed and it was held that he was a tenant. That order was challenged in the Petition. The learned Civil Judge framed two issues which were referred to the Tenancy Court u/s 85A of the Bombay Tenancy and Agricultural Lands Act. The said issues are :

- (1) Does the plaintiff prove that he is a tenant of the suit land?
- (2) Does he further prove that he is in possession of the land as a tenant?

On the facts, it was found by this Court that Issue No. 2 which has been referred by the Civil Court proceeds on assumption that the plaintiff was in physical possession of the entire field including the portion purchased by the present petitioner. The suit filed by the plaintiff is for injunction on the footing that he is in possession. Both the defendants have denied that the plaintiff is in possession. The crucial fact which was to be determined in that case before the question relating to the alleged tenancy of the plaintiff could be agitated was, whether the plaintiff was at all in possession of the field either the whole of it or part of it. With this backdrop, this Court considered the contentions and noticed that :

"5..... Defendant No. 2 is not claiming ownership of the entire field. He is claiming ownership of only half of the field which has been purchased by him and the revenue records disclose that for the years 1972-73 and 1973-74 the plaintiff has been shown to be in actual cultivation of one acre 25 gunthas. Defendant No. 2 is the successor in interest of the Defendant No. 1 and the revenue records disclose that for the years 1956-57 and 1957-58 though the name of the plaintiff is shown for the years 1958-59 and 1959-60 defendant No. 1 is shown to be in cultivating possession. For the years 1960-61 to 1962-63 the plaintiff's name is shown in pencil. For the years 1963-64 the column is blank but from 1964-65 to 1971-72 separate cultivation of the plaintiff and defendant No. 1 has been shown each to the extent of one acre 25 gunthas. Thereafter, for the year 1972-73 and 1973-74 the name of defendant No. 2 finds place instead of the name of the defendant No. 1. The revenue records, therefore, prima facie, show that a

separate half area of the field was in the cultivation of the vendor of the present petitioner. The trial Court, was, therefore, not justified in framing Issue No. 2 on the footing that the plaintiff was already in possession. Undoubtedly, notice u/s 31 of the Tenancy Act was issued by Dattu and an application u/s 88C was also made. But all, this is not very relevant so far as the fact of possession on the date of the suit was concerned. If the plaintiff was able to prove that he was in possession then only the nature of his possession could become relevant. However, if the plaintiff is not able to prove his possession in respect of the area purchased by defendant No. 2, a suit for injunction simpliciter against defendant No. 2 will not be maintainable. If the plaintiff was out of possession of one acre twenty five gunthas which has been purchased by the defendant No. 2, and the plaintiff claimed possession as a tenant, then a suit for possession in a Civil Court will not lie. Therefore, the question as to whether the plaintiff was a tenant or not would not be material for the purpose of the suit at all.".....

On the above-said premises, this Court has held that the issue itself was not necessary. On the basis of this observation made by the learned single Judge, Shri Chandole submitted that the tenancy Court cannot decide the question of possession and that question has to be decided only by the Civil Court.

15. In my judgment, the judgment relied on by Shri Chandole, is not at all applicable. In the case of Baliram, it was a suit for injunction and the question as to who was in possession, was material. On that backdrop the Court held that issue of possession was not required to be referred.

16. Shri Chandole, learned Adv. invited my attention to another judgment of the learned single Judge in Laxmi w/o Sonu v. Sawanta Bapu Mali reported in 1985 Mh.L.J. 314. Having considered the judgment of the learned single Judge, I am of the view that the said judgment is also not material for my purpose, because the question which was considered by the learned single Judge was in respect of injunction application. The question which arose in Laxmi Sonu's case (supra), was, in a suit for injunction whether the claim of tenancy is raised, whether the Civil Court should stay off its hands and not consider the application for injunction till the tenancy authorities decide the said question. In my considered view, this judgment is also not useful for the controversy which is raised in this petition.

17. It may be noted that these two judgments were considered by the Division Bench of this Court to which I will make a reference. The judgment of the Division Bench in the case of Bhagwanrao v. Ganpatrao reported in 1987 Mh.L.R. 1311 and Marybai Marshal Pimenta and Another Vs. Ramnath Gopal Bhuskute and Others, . Both these judgments of the Division Bench were on the point as to whether in a suit for simpliciter injunction if the question of tenancy arose, whether the Civil Court can grant injunction pending enquiry by the Tenancy authorities under the Tenancy Act. Both these judgments are also not material for my purpose while deciding this petition.

18. Therefore, in my judgment, the issue which was referred was proper issue because the case which was put up by the present petitioner and the respondent in the execution proceedings regarding claim of the petitioner as a tenant, but it is contended in the proceedings below that the petitioner was not in possession of the lands before 29th September, 1966 or after 19th July, 1968. The main question that was decided by the Tenancy Court was in respect of Tenancy ; but the Tenancy Court as ancillary question has also decided the question of possession. It is always open for the tenancy authorities while dealing with reference made by the Civil Court, to decide the question of possession also, if referred and needed to be decided as ancillary question, which is also a consequential question to be decided by the authorities. Therefore, it is not possible for me to accept the contention of Shri Chandole that the Tenancy Court cannot decide the question of possession. It is to be noted that the Civil Court has not referred the issue of possession in isolation; what was referred by the Civil Court was the status of the petitioner as a tenant vis-a-vis his possession on the dates which were disputed. Therefore, the tenancy authorities were justified in answering the issue.

19. Shri Chandole, then, contended that the Tahsildar, on an application filed u/s 8 of the Act, has granted a declaration vide order dated 26th February, 1970 and once the Tahsildar in a proceeding taken u/s 8 of the Act, decided the question, then, it was not necessary for the Civil Court, again, to make a reference for that purpose. In order to substantiate his contention, Shri Chandole placed reliance on the judgment of the learned single Judge of this Court in the case of Vithoba Ram Randiv v. Dhairyasinhrao Ghatge reported in 1972 Mh.L.J. 35. I will refer to this judgment a little later.

20. Before that, I have to consider and find out how in what manner the Tahsildar has passed an order on 26th February, 1970. It is the case of the petitioner that on 12th February, 1962 Ramrao executed a Batai Patra in his favour. (This fact is not proved in this proceedings). Similarly, Ramrao executed an agreement of sale on 19th October, 1965 in favour of Shivram (respondent No. 1). This Shivram filed a suit for specific performance of the agreement of sale dated 19th October, 1965. The suit was decreed on 19th July, 1968 and in the year 1969 in the execution of that decree, the sale deed came to be executed. The sale deed so executed is produced on record, which shows that the sale deed was executed on 19th July, 1969. With these undisputed facts, which are borne out from the record, I will find out whether the order dated 26th February, 1970 can help the petitioner to contend that the reference made was improper. As referred earlier in this judgment, the copy of the Tahsildar, the order of the Tahsildar dated 26th February, 1970 is produced on record at Exh."B". From the contents of the order, it appears that the present petitioner-Sheshrao has filed an application that he was cultivating the land Survey Nos. 22B and 9B on Batai basis from Ramrao s/o Shyamrao. On such application being made, the opponent appeared and filed compromise application in which the opponent admitted the applicant's claim. In view of the compromise, the applicant's claim

of tenancy in respect of Survey No. 22B and 9B situate at village Lali (Kd) is decreed. From the contents of the order, it is crystal clear that the owner appeared and filed compromise application. There is no date on which the application for compromise is filed. There is no date when the application is filed by Sheshrao, the present petitioner. This fact I am stating because the suit for specific performance of contract came to be decreed on 19th July, 1968 and the sale deed came to be executed under the execution of the decree on 19-9-1969 i.e. much prior to the order passed by the Tahsildar on an application filed by the present petitioner. It was necessary for the petitioner to produce record before the Tenancy Court in the present proceedings so as to indicate when the tenant appeared and filed consent compromise if after the judgment and decree dated 19th June, 1968 the consent is given by Ramrao, the owner, that consent is without any authority as on that day, the decree for specific performance was passed and in 1969 the sale deed was executed and Ramrao ceased to be the owner of the property. This aspect can be looked into from different angle. In the proceedings filed by petitioner u/s 8 of the Act, the decree-holder was not party and his vendor after he suffered a decree has given consent in that proceedings, an order came to be passed by the Tahsildar. In my judgment, on this count also, the proceedings taken u/s 8 of the Act has no effect on the present controversy. Therefore, this document is not of any help to the petitioner. With this backdrop, now, I will find out whether the judgment relied on by Shri Chandole in the case of Vithoba (*supra*) is applicable.

21. The facts in Vithoba's case are that a Revision Application is filed in this Court, feeling aggrieved by the order passed by the Civil Court declining to make a reference to the Tenancy Court u/s 85A of the Bombay Tenancy and Agricultural Lands Act, 1948. A contention was raised that the petitioner was a tenant within the meaning of the Act. The landlord filed a suit in the Court for possession of half share of the land and from his pocket. By written statement, defendant No. 1, inter alia, contended that the Court has no jurisdiction to decide whether he was a tenant under the Bombay Tenancy Act and the issue in that behalf should be referred to the Competent Authority under the Act, obviously for decision. The Trial Court declined to make a reference on the ground that the issue has already been decided against the petitioner on October 18, 1960 by the authorities under the said Act in proceedings u/s 88C between the same parties in respect of the same land initiated by the plaintiff-landlord and directed that hearing of the suit be proceeded with. The Civil Court declined to make a reference as the issue was already decided by the Tenancy Court in another proceedings between the same parties and in respect of the same land. The learned single Judge considered the question of reference on the basis of the proceedings those were taken u/s 88C of the Act and the Tenancy Court while considering the question u/s 88C decided the question of tenancy. The learned single Judge in para No. 4 of the judgment has considered the question and scope of Section 85A of the said Act. In that case, the proceeding u/s 88C of the Bombay Tenancy and Agricultural Lands Act were taken. u/s 88C landlord can

seek exemption from certain provision of the Tenancy Act to the lands leased by a person with the annual income not exceeding Rs. 1500. When an application for exemption is made, it pre-supposes that the person in possession is a tenant and the landlord is seeking exemption from operation for the provisions of that Act and, on that backdrop, the Tenancy Court in Vithoba's case (supra) decided the claim of tenancy u/s 88C. Unfortunately, that is not the case at hand. As I have stated above, the application was filed by the petitioner u/s 8 of the Act and the landlord Ramrao appeared and filed consent terms and the order came to be passed on 26th February, 1970 which was obviously after the decree was passed by the Civil Court. Therefore, in my judgment, the order dated 26th February, 1970 is of no help to the petitioner. As such, Shri Chandole cannot claim any benefit of the order and assail the finding that reference to the tenancy Court on the issue so framed was incompetent or not necessary. It is not possible for me to accept this contention.

22. Shri Chandole, learned Adv. referred to the judgment of the Apex Court in the case of *Sau. Saraswatibai Trimbak Gaikwad Vs. Damodhar D. Motiwale and Others*, . Relying on this authority, Shri Chandole, tried to contend that so long as the order of Tahsildar dated 26th February, 1970 is intact, the said is binding on the Civil Court and unless and until that order is set aside, the said order is binding on the parties. He pointed out that, in fact, the heirs of Ramrao made an attempt to challenge the order passed by the Tahsildar on 26th February, 1970 by filing an appeal and Revision under the Tenancy Act but they have failed. The order is placed on record. I have perused both the orders. But, in my judgment, the authorities have rejected the application on the ground of jurisdiction. The authorities, therefore, have no occasion to consider the validity of order dated 26th February, 1970. In the present petition, Shri Chandole, has placed reliance on this order. Therefore, it is required to consider the validity of the order. As I already observed that the order was passed by the Tenancy authorities on 26th February, 1970 i.e. after the decree for specific performance was passed and executed, therefore, in my judgment, the order is of no consequence. The judgment of *Saraswatibai's* case (supra) is also of no help to the petitioner. The validity of the certificate which was issued and which was the subject-matter involved in *Saraswatibai's* case was under challenge before the Appellate authority. On this backdrop, the Apex Court has made the following observations :

"25. Thus so long as the certificate stands the decree cannot be executed against the appellant. It is only if respondents 1 and 2 succeed in getting the certificate set aside, in their pending revision, that they can execute the decree. It would be open for respondents 1 and 2 to pursue the revision filed by them against the order dated 23-11-2000. We realize that a revision is on limited grounds. We have noticed that the Appellate Authority dismissed the appeal of respondents 1 and 2 merely on the ground that this Court had stayed the operation of the decree passed by the Civil Court. If the Revisional authority so desires it may remit the matter back to the Appellate Authority for a decision on merits in

accordance with law. We, however, clarify that the decision of the Revisional authority or the Appellate Authority must be based only on the provision of the said Act, findings given by the Civil Court, de hors the provisions of the said Act, and any observation made by us on that question cannot be taken into consideration in deciding whether the appellant is a deemed tenant."

23. Having considered the contentions raised by the petitioner on the basis of the judgment of Saraswatibai's case, in my opinion, the said judgment is not at all applicable.

24. All the three authorities have held against the petitioner on the point of tenancy but curiously enough the petitioner has not produced on record the material document i.e. Batai Patra alleged to have been executed by Ramrao in his favour on 12th February, 1962. The petitioner, for the reasons best known to him, has not produced the said Batai Patra, before the authorities below. It goes without saying that if he was in possession of the said document, it betrays one's imagination as to why the same has not been produced before the Tahsildar, Deputy Collector, or the Tribunal. No explanation whatsoever is forthcoming from the petitioner as to why the document was not produced.

25. A feeble explanation is tendered by Shri Chandole, learned Adv. that no opportunity was given to the petitioner by the authorities below. I have perused the record which is produced before me and there is no slightest suggestion or grievance made by the petitioner in that regard, either before the Tahsildar, Deputy Collector or the Tribunal. Furthermore, no attempt whatsoever was made by the petitioner before any of the authorities and for the first time the document is annexed along with the petition, that too without seeking permission of this Court. Therefore, in my judgment, the production of copy of the alleged Batai patra of 1962 is immaterial for the purpose of deciding the question. Therefore, in my judgment, all the authorities have properly considered the evidence on record and came to the conclusion and answered the issue against the petitioner. Having considered this aspect and the fact that all the three authorities have concurrently held that the petitioner is not in possession on the date mentioned in the issue, in my judgment, there is no error whatsoever appearing on the face of the record. Applying the test laid down by the Apex Court in Suryadeo's case (supra), no cause is made out for interference in the impugned orders.

26. Petition is dismissed. Rule discharged. No order as to cost.

27. Record be sent to the Executing Court forthwith.