

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3682 OF 2014

SURESH KESHAVRAO DAHALE
VERSUS
SAKHARAM GANGARAM UNMUKHE

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Advocate for Petitioner : Mr. V.P. Savant

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CORAM : V.K. JADHAV, J.
Dated: February 23, 2015

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PER COURT :-

1. Heard learned counsel for the petitioner.
2. The respondent is the original plaintiff who has instituted a RCS No.421/1985 for perpetual injunction. The petitioner had appeared in the said suit and contested the suit on merit. After hearing of the suit, the learned Civil Judge (J.D.), Georai was pleased to decree the suit. The said decree was also confirmed in the appeal preferred by the petitioner. Consequently, the respondent/Decree Holder filed a Regular Darkhast No.26/2003 for execution of the decree. In the said Darkhast, the respondent has moved an application Exh.17 for issuance of the warrant. Furthermore, the respondent/ Decree Holder has also filed another application at Exh.21 praying therein for issuance of the warrant to break down the lock of the door and to

remove the constructions as per the decree. Since the learned Judge of the Trial Court has allowed the application at Exh.21, the petitioner has filed present writ petition.

3. Learned counsel for the petitioner submits that the learned Judge of the trial Court has already passed an order below Exh.17 and thus no further order can be passed on the application at Exh.21.

4. On perusal of the order passed below Exh.17, it appears that said application was allowed and the learned Judge of the Trial Court has issued a warrant dismantling the encroachment as specified in the decree. Thereafter, the respondent/Decree Holder by filing an application at Exh.21 brought to the notice of the Court that, the petitioner has made construction over the portion of the subject matter of the decree and also fix a door and locked the same on the said construction. Present petitioner though called upon to file a say, failed to file any say to the said application Exh.21. It appears that the learned judge of the Trial Court has passed order under Order 21 Rule 32 Sub-rule (5) of Civil Procedure Code. In order to satisfy the decree, the executing Court may direct the act required to be done. The petitioner has also not contested the said application by filing his say.

5. In view of this, no case is made out for interference. Writ Petition is devoid of any merit. Writ Petition is dismissed. No costs.

(V.K. JADHAV, J.)

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aaa/-