

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3852 OF 2015

Shri. Janardan Shivram Taware

.. Petitioner

Versus

Shri. Dagadu Shivram Taware and others

.. Respondents

Mr. K. U. Nikam, for the Petitioner.

Mr. R. B. Jagtap, for the Respondent No.1.

Ms. Monali M. Patil, for the Respondent Nos.3A to 3D.

CORAM : R.M. SAVANT, J.

DATE : 10th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 24.03.2015 passed by the Learned 12th Joint Civil Judge Junior Division & JMFC, Pune, by which order the application Exh.71 filed by the Respondents herein came to be allowed and the directions as contained in clauses II and III of the operative part of the impugned order came to be issued. The Petitioner herein is the Judgment Debtor-1 in the execution proceedings being Regular Darkhast No.117 of 1998 filed for the execution of the decree of partition which was passed in the suit filed by the Respondents herein. The said execution proceedings are undisputedly as yet pending and is at the final stage, it is at the said stage

that the instant application Exh.71 came to be filed for the following reliefs.

“a) The Judgment Debtor's and or persons claiming for and on behalf of Judgment Debtor's or through Judgment Debtor's may be directed and restrained from enforcing and or causing any obstruction o the possession, use and enjoy of the said plot by Decree Holder, its nominees or transferee.

b) This Hon'ble Court may also issue appropriate direction to the Inspector Dattawadi Police Station for giving necessary police help and assistance in the above work.”

2. The Executing Court on the ground that the suit plot being measured and the possession receipt being executed before the Tahsildar on 19.10.2012 and thereafter the Judgment Debtor No.1 causing obstruction to the possession over the plot in question and damaging eastern side compund wall to the extent of three feet, deemed it appropriate to allow the instant application Exh.71. It was sought to be contended on behalf of the Petitioner that the Petitioner has already sold the plot in question to one M/s. Anil Shinde and Associates who in turn has sold to the same to Pune Peoples Co-op. Bank and therefore the application as filed was not maintainable at the behest of the Respondent No.1. The Executing Court observed that the factum of third party rights being created are not disputed by the Decree Holder i.e. Respondent No.1. However, under the Sale Deeds executed by the Respondent No.1 in

favour of the third parties, he is obliged to complete the fencing and since there was an obstruction on the part of the Petitioner to carry out the said work that the Executing Court held that the Decree Holder was entitled to file the application in question. In my view, in the backdrop the factum of the suit plot being identified and possession receipt being executed the Decree Holder i.e. Respondent No.1 was entitled to fence his share in the land in question and seek police protection for the said purpose. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

3. It would be open for the Petitioner to apply to the Executing Court for hearing of the application Exh.88. If any such application is made, the Trial Court may decide the same expeditiously.

[R.M. SAVANT, J]

Certified to be true and correct copy of the original signed order.