

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

WP NO.5436 of 2016

902 WRIT PETITION NO. 5436 OF 2016

CHANDRASHEKHAR SIDRAMAPPA CHINCHANSURE DIED
LRS SUKHDA RAJKUMAR MANDE AND OTHERS
VERSUS
BHAURAO SIDRAMAPPA CHINCHANSURE DIED LRS
SHIVANAND BHAURAO CHINCHANSURE AND OTHER

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Advocate for Petitioners : Mr.P.R.Patil, h/f
Mr.Urgunde Suhas P.
Mr. A.G.Godhamgaonkar, Adv. h/f
Mr. M D Godhamgaonkar For R-1 & 1b

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CORAM : P.R. BORA, J.
Dated: July 14, 2016

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PER COURT :-

1. By filing the present petition, the petitioner has challenged order dated 30th April, 2016, passed below Exh.354 in Regular Darkhast No.10/2009. The aforesaid application was filed by the decree holder for re-issue of possession warrant by inserting boundaries of Gat No.58A. The said application has been allowed by the trial Court. It is the contention of the present petitioner that since beginning the boundaries of the property in question were not mentioned and if, at this stage, the insertion of boundaries is permitted, it would amount to amendment of decree. Learned Counsel, therefore, submitted that the course adopted by the trial Court was impermissible and hence has prayed for setting aside the impugned order.

AGP/-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(2)

WP NO.5436 of 2016

Learned Counsel further submitted that the area of the subject property has also not been correctly mentioned.

2. Shri Godhamgaonkar, learned Counsel appearing for respondent, brought to my notice that the decree passed by the Civil Court was subjected to appeal, upto the Supreme Court, and the same has been confirmed at the Apex Court level also. Learned Counsel further submitted that on one or another pretext, the judgment debtors are obstructing the execution of the decree. Learned Counsel invited my attention to the original decree and submitted that the property in question is clearly identifiable. Learned Counsel also brought to my notice the provisions under Order VII Rule 3 of the Code of Civil Procedure which reads as under:

"3. Where the subject matter of the suit is immovable property.- Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. "

3. After having considered the arguments advanced by the learned Counsel for the parties, and going through the material placed on record, it does not appear to me that the trial Court has committed any error in -

AGP/-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(3)

WP NO.5436 of 2016

allowing the application so filed by the decree holder. The material on record shows that in the decree passed in the matter, the survey number of the subject property is mentioned. In the application submitted by the decree holder at Exh.354, it is contended that the Bailiff refused to execute the warrant of possession stating that the land survey No.58-A cannot be ascertained. In the said application, it is further contended that in the earlier report submitted by the Bailiff on 21.8.2014, which is at Exh.251 in the record of the trial Court, he has clearly mentioned the boundaries of the land survey No.58-A. In the circumstances, an application was preferred that the boundaries as are mentioned in the earlier Bailiff report dated 21.8.2014 be inserted in the possession warrant and that application has been allowed. It does not appear to me that allowing of such an application would in any way amount to amendment in the decree. I, therefore, do not find any substance in the present writ petition and it deserves to be rejected and is accordingly rejected.

4. At this stage, learned Counsel appearing for the petitioner, has prayed for staying the effect and operation of the order passed by this Court today for a period of four weeks. Learned Counsel brought to my notice that this Court vide order passed on 12th May, 2016, had provided

AGP/-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(4)

WP NO.5436 of 2016

temporary protection to the present petitioner by restraining the respondents from proceeding pursuant to the impugned order till the next date. Learned Counsel hence submitted that similar protection be extended by four weeks by staying the effect of the order passed by this Court today. I am, however, not inclined to accept the request of the petitioner in view of the finding recorded by me that the petition filed by the petitioner is without any merit and is only filed with an intent of obstructing the execution of the decree which has been passed in favour of the respondent decree holder prior to about 30 years. The request, therefore, stands rejected.

(P.R. BORA, J.)

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