

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

901 WRIT PETITION NO. 6456 OF 2014

SATISH VASANTRAO ZINGADE AND ANOTHER
VERSUS
ABDUL GANI SHAH MOHMAD DIED THR. LRS. SHAKILA BEGUM
ABDUL GANI QURESHI AND OTHERS

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Advocate for Petitioners : Chavan P.S.
AGP for Respondent/State : S.K. Tambe
Advocate for Respondents 1-A to 1F : J.R. Patil
Advocate for Respondent 3 : R.V. Naiknavare
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CORAM : T.V. NALAWADE, J.
DATED : 26th August, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 50 in Execution Petition No. 26/2010 dated 21.4.2014, which is pending before the Court of Civil Judge, Senior Division, Osmanabad. In execution proceeding, the decree holder has filed application for appointment of Court Commissioner, Cadestral Surveyor and order is made as follows :-

“1. An application Exh. 50 is allowed.

2. The City Survey Officer Osmanabad is hereby appointed as a court commissioner to find encroachment made by the owners of Sy.nos.4366, 4367, 4368, 4371-4374, 4429-4422 out of seat no. 43 Osmanabad (Samata Housing Society Layout Osmanabad) in the light of the map Exh. 46.

3. D.H., are directed to pay commissioner's fees as per rule.

4. Issue commission letter accordingly.

5. The commissioner is directed to complete and to submit report within two months from receipt of the order.”

2. As against the aforesaid order, the decree in favour of decree holder is given on the basis of following final order of Regular Civil Suit No. 227/2000.

“i. The suit is decreed with cost.

ii. The plaintiff is entitled for possession of area of 525.11 sq. meter from plot no. 1 as shown in map Exh. 46 from defendant no. 2.

iii. The decree be drawn up accordingly.”

3. It is the case of plaintiff, decree holder that he is owner of plot No. 1 of Survey No. 145/A and the decree is given in respect of the encroachment made on this plot. In view of this circumstance, the aforesaid order made by the Executing Court to take measurement of other survey numbers is bound to create complication. Further, it will amount to going beyond the scope of execution of the decree. In view of these circumstances, this Court holds that this order cannot sustain in law.

4. In the result, the said order made on Exh. 50 in

Execution Petition No. 26/2010 dated 21.4.2014 is set aside. The Executing Court is to continue the execution proceeding as per the decree given and that is to be done within six months from the date of receipt of the order of this Court. Writ petition is allowed and disposed of accordingly.

[T.V. NALAWADE, J.]

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