

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 862 OF 2015

VITTHALRAO APPASAHEB DHUMAL AND OTHERS
VERSUS
USHABAI VITTHALRAO DHUMAL AND OTHERS

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Advocate for Petitioners : Mr. S.J. Salunke
Advocate for Respondents : Mr. B.S. Kudale

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CORAM : V. K. JADHAV, J.
DATED : 1st FEBRUARY, 2016

PER COURT:-

1. By consent of learned counsel for the parties, heard finally.
2. The petitioners are the original judgment debtors challenging the order passed by the executing court below Exh.68 in Regular Darkhast No. 2 of 2012 dated 14.11.2014. The present respondents are the decree holders, instituted a suit for partition and separate possession in respect of agricultural land as well as the house property against the present petitioners. The suit was partly decreed. The present respondents filed execution proceeding in the Court of C.J.J.D. Wadwani. During the course of pendency of Regular Darkhast, an application was filed by the present respondents-decree holders for appointment of Court Commissioner for partition and possession of house property. Learned Judge of the executing Court by impugned order, passed below Exh.68 appointed an

advocate as Court Commissioner for suggesting partition of the suit house property. Hence, this writ petition.

3. Learned counsel for the petitioners submits that the appointment of an advocate as a Court Commissioner would not suffice the purpose as he is not an expert person. There is no description of property sufficient to identify it and therefore, the appointment of advocate, as a Court Commissioner, would not help the decree holder to get the decree executed.

4. Learned counsel for the respondents submits that the trial Court has rightly appointed the advocate as Court Commissioner for suggesting partition of suit house property. Learned counsel further submits that in such decree, when partition of house property is sought, generally advocates are appointed as Court Commissioner.

5. So far as provisions of Order VII Rule 3 of C.P.C. is concerned, the executing court now cannot go behind the decree. The property can be identified on the basis of description given in the plaint which is now part of the decree. The order of appointing an advocate as Court Commissioner for partition of house property, suggesting the partition of the suit house is proper, correct and legal. No error is committed by the lower court in passing the impugned order. In the

result, there is no substance in the writ petition. Writ petition is accordingly dismissed. No costs.

6. In view of the order passed by this court dated 4.2.2015, the petitioner has deposited an amount of Rs.10,000/- in this Court. With consent of learned counsel for the parties, the same shall be transferred to the executing court, wherein the claim of maintenance is also sought to be executed alongwith the decree for partition of house property. The learned Judge of the executing court may take appropriate decision in respect of the amount, so transferred.

(V. K. JADHAV, J.)

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