

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1629 OF 2016**

Shri Yeshwantsinh Gajanan Harugade
and Anr.

Petitioners

Vs

Smt. Savitri Pandurang Harugade

.. Respondent

Mr. Tejpal S. Ingale, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 17/02/2016

PC:

1. Heard Mr. Tejpal Ingale, learned counsel for the petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 6.11.2015 passed by the learned 4th Jt. Civil Judge, Jr. Dn., Sangli, below Exh.53 in Regular Darkhast No.193 of 2006. By that order, the learned trial Judge rejected the application made by the petitioners, hereinafter referred to as judgment debtors, under Section 47 Read with section 151 of C.P.C., inter-alia, praying for direction to City Survey Officer, Sangli, to identify the suit property by its boundaries and area and by preparing plan/map before considering the application made by the decree holder for grant of police protection; to prepare Plan/map after carrying out measurement of the suit property through Office of City Survey, Sangli, thereby, fixing area and boundaries before considering the application made by the decree holder for issuing warrant of possession or granting police protection.

3. Mr. Ingale has taken me through :
 - (a) Mortgage Deed dated 3.7.1990 and in particular paragraph 3 which describes the suit property as under :

R.S. No.134B, admeasuring 81 Ares (inclusive of 1 Are Pot-kharaba) and bounded as follows:

East - R.S.No.134C

South - Sangliwadi - Samdoli Road

West - R.S. No. 134A

North - R.S. No.145
 - (b) Copy of Complaint in R.C.Suit No. 454 of 2000 and in particular paragraph 1A which gives description of land bearing Revision Survey No.134B and boundaries.
 - (c) Map at Exh.E, Page 68
 - (d) Bailiff's report dated 13.4.2015 at Exh.42.
4. He submitted that though the suit is decreed in respect of Survey No.134B, admeasuring 81 Ares, boundaries are not fixed. Measurement is also not carried out. Under the guise of executing decree in respect of Survey No 134B, admeasuring 81 Ares, in fact, the decree holders are executing the decree in respect of property other than the suit property.
5. While rejecting the application, the learned trial Judge has considered Bailiff's report dated 13.4.2015 at Exh.42 when judgment debtor was not present. Father of the judgment debtor Gajanan Hargude was present and he objected to execution of

warrant of possession and also obstructed execution of the decree. The learned trial judge, after considering the fact that the judgment debtor is in possession of the suit property on the strength of Mortgage Deed dated 3.7.1990, observed that he is fully aware of the boundaries of the suit property and that after considering the material on record as also Bailiff's report and the possession warrant Exh.42, it is evident that the decree holders are claiming possession of the suit property. The learned trial Judge further observed that judgment debtors are raising controversy in respect of the property which is not owned by them. The learned trial Judge, therefore, held that the objections raised by the judgment debtors are without any substance and accordingly rejected the application.

6. As noted earlier, perusal of the Mortgage Deed, paragraph 1 of the Plaint clearly describes the suit property. Perusal of the Bailiff's report dated 13.4.2015 at Exh.42 also prima facie shows that the judgment debtors' father Gajanan Hargude has obstructed the execution of the decree. For the reasons recorded in paragraph 6 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, the Petition fails and the same is dismissed.

(R.G.KETKAR, J.)