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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10928 OF 2015

Sadashiv Ravba Gaikwad and others ... Petitioners

Vs.

Kuber Yashwant Gaikwad and others ... Respondents

Mr.Kedar P.Lad, Advocate for Petitioners.

Mr.Sagar Joshi, Advocate for Respondents.

CORAM : R.G.KETKAR, J.

DATE : 04th JANUARY, 2016

P.C. :

. Heard Mr.Kedar P.Lad, learned Counsel for the petitioners and Mr.Sagar Joshi, learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, original Judgment Debtors have challenged the judgment and order dated 28/07/2014 below Exhibit 120 as also the judgment and order dated 26/09/2014 below Exhibit 130 passed by learned Joint Civil Judge, Junior Division, Pandharpur in Regular Darkhast No. 10 of 2000. By order dated 28/07/2014 below Exhibit 120, the learned trial Judge rejected the application made by the Judgment Debtors for stay of execution proceedings. The Judgment Debtors thereafter filed application at Exhibit 128 on 14/08/2014 praying for not

issuing warrant of possession till the bailiff fixes the boundaries after carrying out measurement as per report Exhibit 33. That application was rejected on 25/08/2014. The Judgment Debtors, therefore, filed application Exhibit 130 seeking review of order dated 25/08/2014. By the order dated 26/09/2014, the learned trial Judge rejected the Review Petition.

3. Mr.Lad strenuously contended that respondents, hereinafter referred to as Decree Holders have filed darkhast proceedings for execution of decree passed in Regular Civil Suit No. 419 of 1996 for possession of area admeasuring 81 R which is encroached by the Judgment Debtors. The Suit was decreed by the trial Court. The Appeal preferred by the Judgment Debtors was dismissed by the learned District Judge. Second Appeal preferred by the Judgment Debtors was also dismissed by this Court. The Judgment Debtors approached the Supreme Court and SLP was also dismissed on 01/10/2012. He submitted that on 13/06/2012, the Executing Court issued possession warrant. The surveyor from the office of the Deputy Superintendent of Land Records, Pandharpur was appointed to measure the suit property. The bailiff noted that there are several trees of tamarind, coconut, neem, sandal wood and sugarcane crop is also standing. The bailiff, therefore, recorded that the measurement of the suit property is not possible and vacant possession cannot be delivered without felling trees and crops from

the suit property. The bailiff also recorded that price of all the trees and crops are required to be recovered from the Decree Holders. He submitted that in view of report of the bailiff, possession warrant cannot be issued without first complying the report made by the bailiff. By the impugned order, the learned trial Judge rejected the application Exhibit 120 on the ground that during the pendency of the Suit, suit property was measured and the boundaries were also fixed. As per the measurement carried out by the surveyor, Decree Holders also have deposited Rs.13,300/-in the Court on 05/07/2012. In view thereof, the learned trial Judge rejected the application Exhibit 120.

4. The Judgment Debtors thereafter filed application Exhibit 128 praying for not to issue warrant of possession till the compliance of the bailiff's report at Exhibit 33 is made. The learned trial Judge rejected the application on 25/08/2014 on the ground that the Executing Court cannot go behind the decree. Along with the decree, the Decree Holders have filed measurement map which shows the encroached area by the Judgment Debtors. The Decree Holders are, therefore, not required to once again make compliance of bailiff's and surveyor's reports. The Judgment Debtors thereafter filed application Exhibit 130 for review of the order dated 25/08/2014. By order dated 26/09/2014, the learned trial Judge rejected review petition.

5. As noted earlier, the Suit instituted by the Decree Holders is decreed and the said decree is confirmed right upto the Apex Court. The learned trial Judge has also noted that the Decree Holders have enclosed measurement map along with the decree which clearly shows the area encroached by the Judgment Debtors. That apart, the Decree Holders have also deposited Rs.13,300/-. In short, no further compliance is required from the Decree Holders. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order, more so when the decree passed in favour of the Decree Holders is confirmed right upto the Supreme Court. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)