

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1597 OF 2016

PATILBA CHANDRABHAN TAMNAR
VERSUS
SITARAM SAKHARAM TAMNER AND ANOTHER

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Advocate for Petitioner : Shri Pawar P.S.
Advocate for Respondents 1 & 2 : Shri Deshmukh Rajendra S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 24, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 4.4.2015, by which, application Exhibit 5, filed by the petitioner / decree holder in RD No.16 of 2014, seeking correction in the block number of a suit property, has been rejected.

2. I have heard the submissions of the learned Advocates for the litigating sides.

3. The petitioner had earlier moved an application before the executing Court, seeking correction in a block number of the suit property. Block No. 69/2 was wrongly mentioned in place of the actual Block No. 69/1. The earlier application was rejected merely on the ground that the said application was not

supported by verification. This Court (Coram : S. V. Gangapurwala, J.), by order dated 23.12.2013, permitted the petitioner to prosecute the application and directed the executing Court to consider the application under Section 47 of the CPC. All contentions were kept open.

4. I find from the plaint that except in the opening paragraph below paragraph No.1, Gut No.69/2 has been mentioned. In the rest of the plaint Gut No.69/1 has been mentioned. There is no dispute between the litigating sides that Gut No.69/2 does not belong either to the plaintiff or to the defendants and that was not a subject matter before the trial Court. It is further noticed that yet another mistake was committed in the final decree proceedings dated 26.6.2013 whereby the preliminary decree is to be converted into a final decree. Land Gut No. 59/2 is wrongly mentioned. This final decree is a subject matter of the execution proceedings and it is not debatable nor is it disputed that Gut No.59/2 is not the subject matter of the suit.

5. Section 47 of the CPC provides for dealing with all questions arising between the parties to the suit in relation to the execution, discharge or satisfaction of the decree, by the executing Court and not by a separate suit.

6. It requires no debate that the executing Court has to ensure that the decree being executed is in between the parties to the suit, it pertains to the exact suit land and even by inadvertence, the decree is not to be executed against any other person. Owing to the first mistake prima facie committed by the plaintiff in paragraph No.1 of the plaint, Gut No.69/2 was typed in place of 69/1, though in the rest of the plaint 69/1 has been mentioned. Further error is committed in the final decree by mentioning Gut No.59/2.

7. Considering the above position, in my view, there would be a miscarriage of justice if a wrong gut number is mentioned, since it would lead to some other person being divested of his possession. The defendants do not dispute that Gut No.69/2 is not in their possession and somebody else will have to be divested of the possession if the defendants are directed to implement the decree as it is.

8. Considering the peculiar facts as above, I am of the view that the executing Court should have considered these aspects keeping in view that as Block No.69/1 was wrongly mentioned in the plaint. The decree holder specifically states that the

boundaries to Block No.69/1 are as follows:-

- To the East : Block No.69/2
- To the West : The other part of Block No.69/1
- To the North : Block Nos.70 and 70/1 and
- To the South : Block No.66.

9. This Court, by the earlier order dated 23.12.2013, had permitted the decree holder to place such evidence on record that would convince the executing Court about the above mentioned boundaries. It cannot be disputed that unless these boundaries are specifically indicated, Block No.69/1 may not be said to be the actual block. Learned counsel for the petitioner submits on instructions that the above narration of boundaries is correct and if required, he would lead evidence before the executing Court to prove this aspect and that would convince the executing Court to permit the petitioner to correct the mistakes.

10. Considering the above, this petition is partly allowed. The impugned order dated 4.4.2015 is quashed and set aside and Exhibit 5 is remitted to the executing Court by recording the statement of the petitioner as regards the adjacent lands and their boundaries as are mentioned herein above. After adducing appropriate evidence, if the executing Court is convinced that

Block No.69/1 is the correct description of the suit property, it would allow application Exhibit 5.

(RAVINDRA V. GHUGE, J.)

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