

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.390 OF 2012

Shri. Nagesh Parshuram Magdum	...Petitioner
vs.	
Smt. Shakuntala Parshuram Magdum & Ors.	...Respondents

Mr. P. D. Pise for the Petitioner.
Mr. S. S. Ambedkar for Respondent Nos.1 and 2.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 22nd November, 2017

P.C.:

. Heard. Rule. Rule is made returnable forthwith with the consent of the parties. The Petitioner herein happens to be the original Defendant in Regular Civil Suit No. 342/1991. The suit was decreed by judgment and order dated 17/11/1999. The Petitioner is the Judgment debtor. It is an admitted position that the judgment and order has not been challenged before any Court. The execution proceedings were filed on 18/2/2006. That the execution proceedings had partly been completed. Two properties were given in the possession of the Decree holder. While executing the third property there was an objection raised by the Judgment debtor. The bailiff had submitted a report on 4/10/2011.

2. The bailiff's report shows that in the original suit as well as in the decree, names of the owners of the adjacent properties did not match with the suit property mentioned in the plaint or in the decree. That the statements of the adjacent owners were recorded and therefore execution as far as area 80R was concerned could not be completed. Thereafter, the Decreeholder had filed an application in the execution proceedings and had brought to the notice of the Court that during the pendency of the suit and

the execution proceedings the adjacent land owners had executed a gift deed in favour of Sonabai Babu Magdum. There was a mutation entry to that effect and that the grand sons of Sonabai Magdum were in possession. The mutation entry was placed on record. The prayer of the Decreeholder was that the names of the adjacent land owners be changed/modified in the original decree. There was no mention about the area and the area was not disputed.

3. The learned Executing court by order dated 28/11/2011 has been pleased to allow the application and has directed that the names of the owners of the adjacent property be changed in the original report. Hence, this writ petition.

4. Mr. Pise, Learned counsel for the Petitioner vehemently submits that the Executing Court could not go beyond the decree and the decree could not have been modified. It is submitted that Order 21 of the Civil Procedure Code would not permit the Executing Court to go beyond the decree. It is therefore submitted that the application ought not to have been allowed.

5. Mr. Ambedkar, Learned counsel for the Respondents submits that in fact there is no dispute in respect of the property i.e. to be executed i.e. 80R of Gat No.340 A. The only question is about the identity of the owners of the adjacent lands and it is further submitted that the Court has not gone beyond the decree and the Court has only permitted the application in consonance with the prayer clause in the application and has admitted change of names of the adjacent land owners as is mentioned in the report of the bailiff also. Perusal of the record discloses that the dispute is not over the identity of the property but only in respect of the change in the names of the adjacent owners. Hence, it cannot be said that the Court

has committed error in allowing the said application. The application has been allowed under order 21 of Civil Procedure Code, to enable the bailiff to carry out execution and that there should not be any dispute in respect of the boundaries mentioned in the plaint or the decree.

6. In view of the bailiffs report, the Petition is allowed. The order dated 28/11/2011 calls for no interference. However, it is made clear that except change in the names of the adjacent land owners, there shall be no difficulty in executing the decree and identifying the property as stated in the decree. Rule is discharged. Petition stands disposed of. Needless to say that ad-interim relief in terms of prayer clause (a) stands vacated.

(SMT. SADHANA S. JADHAV, J.)