

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO. 9346 OF 2017

RAFIQ YUSUF SAYYED
VERSUS
BHIMSNGH GULABSINGH THAKUR

...

Advocate for Petitioner : Mr. Kazi S.S.

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CORAM : V. K. JADHAV, J.
DATED : 13th MARCH, 2018

PER COURT:-

1. The respondent-original plaintiff has instituted the special civil Suit No. 23 of 2003 before the learned Civil Judge, Senior Division, Osmanabad for eviction of the petitioner and also for recovery of possession. By judgment and decree dated 23.2.2010 the trial court has decreed the suit and the said decree has attained finality. During pendency of the second appeal before this court, the respondent decree holder has filed the Regular Darkhast before the court for execution of the judgment and decree passed by the trial court. The said proceedings are still pending. During pendency of execution proceedings, the petitioner has filed an application Exh.53 for measurement of the suit land on the ground that there is difference of area in respect of the properties as mentioned in the Special civil suit No. 23 of 2003 and in Exh.21 which is an extract of the suit property placed before the Court in the execution proceedings. It has been

also contended in the application Exh.53 that due to said difference in the area, the decree holder is seeking execution of the defective decree. It has been also contended that the respondent decree holder has sold the property in survey No. 3/1 to the various persons and as such it is not clear on which portion of land of survey No. 3/1 the respondent decree holder has made the construction and which portion of aforesaid property has been sold by him to various persons.

2. On careful perusal of the pleadings in Special Civil Suit No. 23 of 2003, it appears that the respondent-decree holder claimed to be the owner in possession of the land survey No. 3, Municipal house No. 3/1, admeasuring 10 R, which is surrounded by four boundaries as detailed in para 1 of the plaint. In para 2, the respondent-decree holder has specifically pleaded that out of the said portion, the western portion adjacent to Paranda-Sonari road admeasuring 20 x 15 feet is given by the plaintiff to defendant on 1.11.1997 on leave and licence basis. In addition to this, the plaintiff has given 1 R portion of his land survey No.3 which is surrounded by the boundaries as mentioned in detail in para 2 of the suit. It further appears from the prayer clause that the respondent decree holder has claimed decree of eviction from 1 R portion to the boundaries as mentioned in para 2 of the plaint. In terms of the said pleadings, the

trial court has decreed the suit and accordingly the said decree has attained finality.

3. It appears from the para 7 of the application Exh.53 that the petitioner is unnecessary making confusion by mentioning the boundaries of entire property whereas the relief is claimed in respect of certain portion of the said property of the land survey No.3/1. The same appears to be unwanted and uncalled for. The learned Judge of the executing court has specifically observed that the suit property can be identified on the basis of the boundaries as mentioned in the decree. I do not think that there is any defective decree as claimed by the petitioner judgment debtor. There is no need to measure entire land survey No.3 in the execution proceeding as requested by the petitioner. I do not find any fault in the impugned order. There is no substance in the writ petition. Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

rlj/