

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

WRIT PETITION NO.8473 OF 2018

Sadashiv Mukund Tendulkar & Ors. .. Petitioners
Vs.
Vijay Vasant Tendulkar & Ors. .. Respondents

Mr.Mayur Khandeparkar i/by Mr.E.A. Sasi for the petitioners.
Mr.Yashodhan Gavankar for the respondent nos.2 to 4.

CORAM : R.D. DHANUKA, J.
DATE : 31st August 2018

P.C.:

. The petitioners herein have raised an issue of alleged clerical error in the possession warrant. If any such error is crept in the possession warrant, the petitioners are entitled to agitate the said objections before the Executing Court. Learned counsel for the respondent nos.2 to 4, on the other hand, submits that the revised possession warrant has already been issued. This Court has not expressed any views as to whether any clerical error in the possession warrant issued by the Executing Court exist or not. The said issue can be considered by the Executing Court expeditiously.

2. By consent of parties, the following order is passed :-

- (i) The order dated 25th April 2018 passed by the learned Joint Civil Judge, Junior Division, Thane below Exhibit-16 is upheld.
- (ii) The respondents who are the decree holders are entitled to execute the decree passed by the trial Court on 27th June 2005 thereby

allowing the counter claim filed by the respondents in Special Civil Suit No.1116 of 1994.

- (iii) The respondents however shall not create any third party rights in respect of the suit property after obtaining the possession thereof in execution of the decree for a period of eight weeks from today.
- (iv) The application filed by the applicants for setting aside the order of dismissal of the suit on 22nd August 1990 i.e. Special Civil Suit No.249 of 1983 shall be decided by the learned Joint Civil Judge, Junior Division, Thane within four weeks from today.
- (v) Both the parties are directed to appear before the learned Joint Civil Judge, Junior Division, Thane on 4th September 2018 at 11.00 a.m. and shall not seek any unnecessary adjournment.
- (vi) Writ petition is disposed of in aforesaid terms. No order as to costs.
- (vii) Parties as well as the learned Joint Civil Judge, Junior Division, Thane to act on the authenticated copy of this order.

R.D. DHANUKA, J.