

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Writ Petition No.3751/2018

Manaklal s/o Hariprasad Sahu Vs. Maruti Deosthan Morshi.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Vivek Thote, Advocate for petitioner.

CORAM : S. B. SHUKRE, J.
DATE : OCTOBER 08, 2018

Heard learned counsel for the petitioner.

The first contention of the learned counsel for the petitioner is that the area of the property has not been properly described in the application filed for execution of a decree. According to the executing Court, this area is as per the area of the property shown in the plaint and therefore, the executing Court has found that if any issue is allowed to be raised and adjudicated by the executing court, it would amount to going behind the decree, which is not permissible in law.

I do not find any illegality or perversity in the findings so recorded by the executing Court. In the present case, the property has been sufficiently described in the plaint itself. The decree has attained finality after an appeal filed by the judgment debtor against the decree came to be dismissed, although, it was dismissed in default, but no challenge in any

manner was raised by the judgment debtor.

It is also submitted by the learned counsel for the petitioner that the decree has been sought to be cancelled by only some of the judgment debtors and not all the judgment debtors. I don't see any substance in the argument for the reason that the executing Court has noted relevant facts in the order which need to be borne in mind by this Court. The executing Court has found that previously his learned predecessor had issued possession warrant against the judgment debtor. This order previously issued, has not been challenged by the judgment debtor and there is no dispute about this fact. If this is so, the filing of the similar application by the petitioner in order to procure one more order so as to challenge it by creating show that a fresh cause of action has arisen in the matter, could not have been allowed and has been rightly rejected by the executing Court.

I see no merit in this petition. The petition stands summarily dismissed. No costs.

JUDGE

Andurkar.