

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3529 OF 2016

SHAMRAO LAXMAN WAGH
VERSUS
BALA LAXMAN WAGH DIED THROUGH LRS SANDU BALA WAGH AND
OTHERS

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Advocate for the Petitioner : Shri Kulkarni Suresh M.
Advocate for Respondents 1A, 2A, 2B, 3A to 3E, 4 to 7 : Shri Devakate
Anant R.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th April, 2019

Per Court:

1 This matter was heard at length on 22.04.2019 and posted today for further hearing and orders.

2 Considering the order that I am passing, it would be unnecessary to advert to all contentions of the litigating sides. Suffice it to say that the Petitioner/ Decree Holder is the Plaintiff in Regular Civil Suit No.34/1977, which was dismissed by judgment dated 30.03.1981. The Petitioner/ Plaintiff preferred Regular Civil Appeal No.276/1981, which was dismissed by judgment dated 29.06.1987. His Second Appeal No.278/1987 was allowed by this Court by judgment dated 08.07.2008. As the suit was decreed by this Court in favour of the Petitioner/ Plaintiff,

the Respondents/ Defendants approached the Honourable Supreme Court in Special Leave Petition, which is also said to have been dismissed. There is no dispute on these facts.

3 The Petitioner/ Decree Holder, therefore, preferred Regular Darkhast No.13/2008. The order impugned in this petition is dated 20.01.2016 passed by the Executing Court, which reads as under :-

"Plaintiff/ decree holder directed to fixed four boundaries of suit properties by appointing court commissioner till then possession warrant is infructuous hence stayed till further orders".

4 Though the Respondents/ Judgment Debtors have defended the impugned order, I find it quite strange on the part of the Executing Court in directing the Decree Holder to fix four boundaries of the suit properties by appointing the court commissioner.

5 During the course of submissions of the respective sides, I called upon the parties to state as to whether, any side would have any objection if the Taluka Inspector of Land Records (TILR) is appointed as a court commissioner and a particular date is given for carrying out the spot inspection for fixing the boundaries of the suit properties, which would be followed by submission of his report and the Executing Court would then proceed to pass an order on attachment of the properties. The litigating sides have agreed for the appointment of the TILR as a court

commissioner and are willing to appear before him on an appointed date and time.

6 In the light of the above, this Writ Petition is disposed off. The reproduced direction of the Executing Court as above, stands modified with the following directions :-

- (a) The Taluka Inspector of Land Records, Bhokardan, District Jalna is appointed as a Court Commissioner.
- (b) The litigating sides are at liberty to serve a printout copy of this order on the said TILR.
- (c) The Petitioner/ Decree Holder shall deposit the requisite charges before the TILR on or before 15.05.2019.
- (d) The amount of charges already deposited by the Petitioner/ Decree Holder before the Executing Court, pursuant to the order dated 14.11.2014, which was never implemented, can be withdrawn by the Decree Holder, without conditions.
- (e) All the litigating sides would appear before the TILR on 03.06.2019 at 12:00 noon and thereafter, the TILR shall proceed to measure and fix the boundaries.
- (f) The TILR would fix the boundaries and submit his report, map and spot inspection report, before the Executing Court on or before 15.06.2019.
- (g) The Executing Court would then decide the fate of the

possession warrant by passing a reasoned order, on or before 29.06.2019.

- (h) Since the suit is of 1977 and the execution proceedings are of 2008, the Executing Court shall decide the execution proceedings on or before 31.08.2019.

kps

(RAVINDRA V. GHUGE, J.)