

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

WRIT PETITION NO. 9270 OF 2019

**GOVIND DADARAO PATIL
VERSUS
BABU PANDURANG SHELKE AND OTHERS**

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Advocate for the Petitioner : Smt. M. D. Thube - Mhase
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 1st AUGUST, 2019.

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PER COURT :

1. This matter was heard on 30/07/2019 and today.
2. The learned Advocate for the petitioner submits that the petitioner is the L.R. of the original judgment debtor. He is aggrieved by the order dated 09/04/2019 passed by the executing Court, by which, an application Exhibit 72 requesting for a direction to carry out the measurement of the suit land so as to locate 33 R. land which is decreed in favour of the decree holder, has been rejected.
3. It is strenuously submitted by the learned Advocate that after the decree was passed in Regular Civil Suit No. 277/1979 on 21/08/1984, the judgment debtor had preferred an appeal

before the First Appellate Court. The said appeal has been dismissed. The second appeal was dismissed in default and the application for restoration is pending. The decree holder initiated R.D. No. 91/1991 on 04/05/1990. The original Judgment Debtor No.1 Dadarao passed away on 13/07/1998. His son Govind, the petitioner herein has been brought on record alongwith his sisters.

4. It is submitted that the 33 R. land cannot be traced out in Survey No. 4/A. Unless a proper measurement is carried out, the said property cannot be identified. If such a property is unidentified, the decree would be practically rendered inexecutable.

5. I find from the record available that the decree holder has stated in his application for execution, at Clause 7 that he is entitled to 33 R land out of Survey No. 4/A. The boundaries on the east, south and north sides are identified as being the lands belonging to the defendants. On the west portion is the plaintiff's land. A map with the plaint is placed on record. The decree holder prays for an enquiry to be ordered, after the delivery of the possession, for calculating the mesne profits.

6. The Trial Court has concluded that the 33 R. land can be handed over to the plaintiff from the suit property which was clearly established before the Trial Court. In my view, when the bailiff proceeds to the suit land, he would be in a position to complete the formalities and if he has any difficulty, he would surely revert back to the executing Court to explain any difficulty.

7. In execution proceedings, which are 28 years old and the suit was initiated 40 years ago, I do not find that the request of the Judgment Debtor, who was brought on record as a L.R. on 08/04/2015, has filed Exhibit 72 on 05/12/2018, which is after 3½ years. In these circumstances and at the behest of such a judgment debtor and more so when the property is described by the plaintiff in the execution application, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-