

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14286 OF 2017

Shri Mohan Lalji and anr. .. Petitioners
Vs.
Shri Karsan Lalji and anr. .. Respondents

Mr.P.N.Joshi a/w Mr.R.M.Khairnar, for the Petitioners.

CORAM : M.S.KARNIK, J.

DATE : 15th JANUARY 2019

P.C. :

. Learned Counsel submits that in the course of execution of the decree, the application below Exhibit 1 in execution was filed which came to be dismissed by the impugned order passed below Exhibit 1 dated 24/10/2016. Learned Counsel for the petitioners submits that the petitioners are already in possession of their share of the suit property which was decreed in their favour. The Court Commissioner was appointed and pursuant to the report of the Court Commissioner, the petitioners are now in possession of their

share of the suit property. Learned Counsel further submits that the application which was filed before Executing Court was not in a proper form and certain contentions which should have been raised were not raised in that application. As the petitioners are already in possession of their share of the suit property pursuant to the report of the Court Commissioner, learned Counsel submits that he may be permitted to withdraw the application below Exhibit 1 with liberty to file a fresh application.

2. In this view of the matter, learned Counsel for the petitioners is allowed to withdraw the application below Exhibit 1 in S.E.A. No. 1 of 2016. In the event the petitioners file a fresh application in execution of the decree, the same to be considered on its own merits. Needless to mention that executing Court will not be influenced by any observations made in the order dated 24/10/2016 passed below Exhibit 1 while considering such application.

3. With these observations, Petition is disposed of.

(M.S.KARNIK, J.)