

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10647 OF 2018

Dadaso Shankar Thombare

..Petitioner.

V/s.

Yeshwant Maruti Nikam & Ors.

..Respondents.

Mr.Amitkumar D.Sale for the petitioner.

Mr.Vaibhav R.Gaikwad for the respondents.

CORAM : M.S.SONAK, J.

DATE : MARCH 15, 2019

P.C.:-

Heard Mr.Sale, learned counsel for the petitioner and Mr.Gaikwad, learned counsel for the respondents.

2. Challenge in this petition is to the order dated March 20, 2018 made by the Executing Court appointing and directing the Court Commissioner to execute the sale deed in order to execute the decree for specific performance made in Regular Civil Suit No.52/1980.

3. Mr.Sale, learned counsel for the petitioner submits that the decree is in respect of the property being Gut No.241. He, however, points out that the execution has been ordered for Gat No.241/2. He submits that, it means that the Executing Court has travelled beyond

the terms of the decree. He submits that assuming that there is some change in the survey number, the decree holder is required to apply for amendment of the plaint of amendment of the decree and only thereafter, the execution can proceed.

4. Mr. Gaikwad, learned counsel for the respondents-decree holder defends the impugned order on the basis of the reasoning reflected therein.

5. Perusal of the record shows that the objection raised by the petitioner is most frivolous and was correctly rejected by the Executing Court.

6. The Executing Court has noted that though the decree was in respect of property Survey No.241, later on due to acquisition proceedings initiated by the Irrigation Department, a portion of the said property came to be acquired. The acquired portion has been surveyed as Gat No.241/1 and the remaining portion has been surveyed as Gat No.241/2. There does not appear to be any dispute whatsoever that the property surveyed in Gat No.241/1 is nothing but a portion of the property survey No.241 in respect of which there is a decree for specific performance. In such circumstances, the Executing Court was justified in making the impugned order.

7. There is no necessity for seeking any amendment of the plaint of amendment of the decree. The Executing Court has

undertaken the exercise, taking into consideration the provisions of section 47 of the Civil Procedure Code.

8. Accordingly, there is no jurisdictional or other error in making of the impugned order. The petition is liable to be dismissed and is accordingly dismissed.

9. There shall be no order as to costs.

10. The Executing Court is directed to proceed with the execution and dispose of the same as expeditiously as possible.

(M.S.SONAK, J.)