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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10571 O F 2019

Hasan Yunus Haju ...Petitioner
vs.
Anant Mahadev Surve & ors. ...Respondents

....
Shri R.D. Suryawanshi for petitioner.

....
CORAM : M.S.KARNIK, J.

DATE : 30th SEPTEMBER, 2019

P.C.

Not on Board. Taken on Board.

2. Learned counsel for the petitioner objected to the order passed by the Executing Court issuing possession warrant by an order dated 7/8/2019.

3. The petitioner is the judgment debtor. Learned counsel for the petitioner submitted that there is a variance of the dimension of the mortgaged property in as much as the area mentioned in the Mortgage Deed and the Plaint are something different. Further it is contended that the issue of the tenancy is not decided by the proper forum and that the said issue should have been dealt with by the tenancy Court.

4. In respect of the another judgment debtor who had filed Writ Petition No. 9982 of 2019, this Court by an order dated 13th September 2019 has already rejected the very same contention

raised by the petitioner herein. In fact the judgment and decree of the trial Court has been confirmed right upto the Hon'ble Supreme Court.

5. Learned counsel for the petitioner, as indicated earlier has also raised the challenge that there is variance in the area mentioned in the Mortgage Deed and the Plaint. In my opinion, the present application is only with a view to protract the execution. Moreover, this aspect has been taken into consideration by the Executing Court in paragraph 8 which has been stated as under :

“08. Further, so far as area of property under execution is concern Hon'ble District Court Ratnagiri in Regular Civil Appeal no.86/2010 in paragraph no.18 held that survey no.43A Haissa no.2+3+6 was the oldest survey number of suit property of present suit bearing Gat no.350. There is no dispute regarding identity of property. Further, in paragraph no.37 specifically held that there is variance in area of mortgage property. According to Marathi translation of unregistered mortgage deed which is in Modi script, area of mortgage land was one acer, but distribution table and revenue record prepared on the basis of distribution table long back in the year 1972 by virtue of mutation entry no.1666, shows that the entire suit land was mortgaged with predecessor in title of the defendants by predecessor in title are in possession of entire suit property. Plaintiffs proved their title on entire suit land. Thus, merely on the basis of some inconsistency of about area of mortgage land suit cannot be thrown out. Further, Hon'ble High Court Bombay and Hon'ble Supreme Court of India dismissed the Second Appeal and Special Leave Petition respectively filed by opponents. In this circumstances I do not find any material substance regarding variance in the area of property under execution.”

6. I see no reason to interfere with the order passed by the Executing Court. The Petition is rejected.

(M.S.KARNIK, J.)

Diksha
Rane

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