

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 1104 of 2018

Kishor Wankhede Vs. Raimalbua Sansthan, Akot

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.B.N. Mohta / Mr. D.S. Patil, Advocate for petitioner.
Mrs. R.D. Raskar, Advocate for respondent No.1.

CORAM : MANISH PITALE, J.

DATED : APRIL 30, 2019

By this writ petition, the petitioner has challenged order dated 31/07/2017, passed by the Court of Civil Judge (Jr. Dn.), Akot (Executing Court), whereby the application filed by the petitioner for appointment of Commissioner for spot inspection (Exh.28) has been rejected by the Executing Court.

2. The respondent No.1 Trust has a decree of possession in its favour pertaining to suit property specifically described by it in the plaint in paragraph 1, which, led to decree in its favour. The decree was passed by the Trial Court in favour of respondent No.1 on 09/08/2006. The execution of the said decree is pending for the past about 13 years. The petitioner is objector to the said decree. Initially, the petitioner had filed application under Section 47 of the Code of Civil Procedure, 1908, but, thereafter he filed an objection

under Order 21 Rule 97 of the CPC. His contention is that even as per the respondent No.1 trust, he had shifted out the suit property and that, therefore, the decree passed in favour of respondent No.1 Trust cannot lead to dispossession of the petitioner.

2. In the impugned order, the Trial Court has noted that the petitioner at one point of time stated that he was in possession of the suit property, but, thereafter he has come out with clear stand that he has shifted out of suit property and since he has no concern with the same, the process of execution of decree ought not to lead any harassment to him. On the basis of said contention, the petitioner has filed the aforesaid application for appointment of Commissioner.

3. This Court fails to understand that when the case of the petitioner himself is that he is not in possession of the suit property, how can he have any grievance with the execution of the decree in respect of the suit property. In this situation, it is further difficult to understand as to how a Commissioner for spot inspection can be appointed at the behest of such an objector who claims that he is not in possession of the suit property, which is the subject matter of the decree. The respondent No.1 Trust has been waiting for the execution of decree since 09/08/2006 and till date the decree has not been executed. The Petitioner being the objector before the Executing Court has filed one

objection after another and thereafter, he filed the said application for appointment of Commissioner for inspection. But, as noted above, since according to the petitioner himself, he has no concern with the suit property, no fault can be found with the Executing Court in rejecting the application for appointment of Commissioner for spot inspection (Exh.28) filed on behalf of the petitioner.

4. Hence, this writ petition is found to be without any merit and it is dismissed.

JUDGE

MP Deshpande