

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

WRIT PETITION NO.3045 OF 2019

Ukandrao Anandrao Wath and another

Vs.

Rambhau Tulshiramji Wath and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri B.M.Kharkate, Advocate for petitioners.

CORAM : A.S.CHANDURKAR, J.

DATED : April 15, 2019

The petitioners who are the legal representatives of original defendants are aggrieved by the order passed below Exhibits 40 and 41 in the execution proceedings whereby the application moved by the decree holder for grant of police aid for seeking possession has been allowed.

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The respondent no.1 herein had filed Regular Civil Suit No.155/1991 seeking possession of 0.8 R land from the defendants. The Trial Court dismissed the suit. The appellate Court by its judgment dated 02.01.2007 allowed the appeal and decreed the suit. Thereafter execution proceedings came to be filed in the year 2007. Initially by passing order below Exhibit 20, possession warrant had been issued, but the same was not executed. Thereafter the decree holder filed an application below Exhibit 40 for re-issuance of the warrant of possession. He also filed application below Exhibit 41 for grant of police aid for execution of the decree. These applications were opposed by the petitioners herein on the ground that the property was not identified and therefore the applications were

liable to be rejected. By the impugned order the Executing Court has allowed both the applications.

Shri B.M.Kharkate, learned counsel for the petitioners submitted that both the petitioners are the legal representatives of the original defendants and they were not aware about the decree being passed. The land of which the possession was sought was not properly identified and therefore the Executing Court was not justified in issuing warrant for possession. He submitted that, even at this state, the decree for possession could be challenged and therefore the impugned orders are liable to be set aside.

On hearing learned counsel for the petitioners, it is seen that the suit was decreed by the appellate Court on 02.01.2007. At that time, the defendant no.2 Ramchandra had expired and his legal representatives were brought on record. The petitioner no.2-Daulat was brought on record in the said appeal. The defendant no.1-Anandrao expired after the said decree and the petitioner no.1 was brought on record in the execution proceedings. On 22.11.2013, the Executing Court passed order below Exhibit 20 and directed issuance of warrant of possession. The warrant was however not executed. The Executing Court has found that though the decree was passed in the year 2007, it was still not executed for almost eleven years. On that count, the impugned orders have been passed. It could be seen that the petitioners were parties to the execution proceedings, but no steps were taken to challenge the decree as passed. The suit property has been described in the plaint along with its boundaries as well as the Map at Exhibit 35. The Executing Court would therefore take into consideration the

boundaries of the suit property as well as the map while executing the same. There is no illegality found in the issuance of warrant of possession and grant of police protection especially when the decree had attained finality in the year 2007. In absence of any jurisdictional error, there is no reason to interfere in writ jurisdiction. Writ petition is therefore dismissed. No orders as to costs.

JUDGE

Andurkar.