

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6279/2019

(SHRIRAM DATTARAO CHOUDHARY & ANOTHER **VERSUS** MADHAODAS M. MUNDHADA)

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

Court's or Judge's orders

Shri A.R. Deshpande, counsel for petitioners.
 Shri R.L. Khapre, counsel for respondent.

CORAM : A.S. CHANDURKAR, J.

DATE : NOVEMBER 06, 2019.

The challenge raised in the present writ petition is to the order dated 02.08.2019 passed by the Executing Court below Exhibit 106. By that order, the Executing Court has rejected the application by which it was prayed that the disputed site shown in the plaint map be measured before the decree is executed.

The respondent is the decree holder who had filed suit for possession of area admeasuring 10 Feet X 45 Feet shown by letters DEFG in the plaint map. The said suit was decreed and that decree has attained finality. In the execution proceedings, the Court Commissioner was appointed to facilitate execution of the decree. In the order dated 21.10.2015 passed below Exhibit 72, 81 and 83, the Executing Court observed that the Court Commissioner was at liberty to measure the lands if he found it so necessary. The application moved by the judgment debtors before the Court Commissioner however was rejected on the ground that such measurement was not necessary in the light of the boundaries of the said property. The judgment debtors therefore moved an application seeking appointment of the Court Commissioner at Exhibit 94 which came to be rejected. Challenge to that order was raised in Writ Petition No.2209 of 2016 but that challenge was not examined on merits. Hence, fresh application at Exhibit 106 was moved by the judgment debtors which has been rejected.

Shri A.R. Deshpande, learned counsel for the petitioners submits that in the light of the observations made by the Executing Court in the initial order dated 21.10.2015, the same indicated the requirement to measure the land in question to facilitate proper execution of the decree. He submitted that it was the apprehension of the judgment debtors that under the garb of executing such decree, the petitioners would be dispossessed from that part of the land which was not the subject matter of the decree. He therefore submits that to facilitate proper execution of the decree, it was necessary to measure the land as prayed for by Exhibit 106.

Shri R.L. Khapre, learned counsel for the respondent supported the impugned order by submitting that as the Court Commissioner did not find it necessary to measure the land for the purposes of executing the decree, the Executing Court was justified in rejecting the said application. He further submitted that since the challenge to the order passed below Exhibit 94 was not pursued, that order operates against the petitioners in the present proceedings. According to him, the petitioners have no right to continue to occupy the land which was the subject matter of the decree.

I have heard the learned counsel for the parties and I have perused the documents placed on record. The Executing Court by its initial order dated 21.10.2015 appointed a Court Commissioner to facilitate execution of the decree. Liberty was granted to the Court Commissioner to have the land measured if he found it necessary for that purpose. The Court Commissioner in his report observed that since the boundaries of the land were shown in the plaint map, it was not necessary to measure the land in question. Perusal of the plaint map indicates that boundaries have been stated therein which facilitate the identity of that property. Since the Court Commissioner did not find it necessary to measure the said land, the Executing Court has accepted

that opinion of the Court Commissioner. I do not find any error on the part of the Executing Court in refusing to allow the application that was moved by the judgment debtors. Though the learned counsel for the petitioners relied upon the decision in *Kisanlal Maniklal Rathi Versus Dinkar Yashwant Patil* [2005(1) Mh.L.J. 138] to substantiate his submission, in the facts of the present case since the suit property is properly described alongwith its boundaries, it is not found necessary to interfere with the impugned order.

The apprehension expressed by the petitioners of being dispossessed from the portions not covered by the decree can be taken care of by directing the Executing Court to execute the decree in accordance with the boundaries mentioned in the plaint map. The Writ Petition is dismissed. No costs.

JUDGE

APTE