

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

WRIT PETITION NO. 6622/2019

(ZINATH SHAIKH VAZEER (DEAD) THR. LR'S MUMTAZ SHEIKH HABIB & OTHERS **VERSUS**
BHAIKAVPRASAD SHARADPRASAD KESHARWANI & ANOTHER)

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

Court's or Judge's orders

Shri M.G. Qubbawala, counsel for petitioners.
Shri F.I. Abid, counsel for respondents.

CORAM : A.S. CHANDURKAR, J.

DATE : OCTOBER 16, 2019.

The challenge raised in the present writ petition is to the order passed by the trial Court below Exhibit 79 by which the application moved by the Judgment Debtors for appointment of a Court Commissioner to effect partition for the purposes of executing the decree for possession has been rejected.

In the plaint, the suit property has been described in paragraphs 1 and 2 thereof. The decree having attained finality it was sought to be executed. The schedule of property has been described as eastern half portion of a single storeyed house of which the boundaries have been given. According to the Judgment Debtors, it was likely that a larger portion of the property could be given to the Decree Holders during execution causing prejudice to them. Hence, the application at Exhibit 79 was moved for appointment of a Court Commissioner. The application was opposed by the Decree Holders stating therein that there was no reason to appoint a Commissioner and the decree as passed was clear. The trial Court has thus rejected the said application.

It is submitted by the learned counsel for the petitioners that considering the nature of the suit property and the fact that a decree has been passed for delivery of possession of eastern half portion it was likely that the property to be handed over would not be properly identified. To facilitate the same, it was necessary to appoint a Court Commissioner to demarcate the boundaries. This would have enabled proper identification of the same. The trial Court ought to have allowed that application.

On behalf of the respondents, it is submitted that the suit property has been properly described in the plaint as well as in the application for execution. The parties were aware as to the subject matter of the suit property and therefore the apprehension expressed by the petitioner was uncalled for. The attempt was only to delay the execution proceedings. No interference was called for with the impugned order.

On hearing the learned counsel for the parties and on perusing the documents on record, it is seen that the description of the suit property in the plaint is quite clear. The total area alongwith the built-up area has been indicated. Similarly, the boundaries thereof have also been stated. The schedule of property is also stated in the execution application alongwith boundaries. The apprehension expressed by the Judgment Debtors at this stage is unfounded in view of the fact that the area of which possession has to be delivered can be clearly gathered from the plaint. Moreover in the earlier reports of the bailiff there is no difficulty expressed in identifying the suit property. Since the Decree Holders also do not find any difficulty in having the decree executed, no fault is found with the order passed by the trial Court rejecting the application. I do not find any reason to interfere with the impugned order.

The Writ Petition is dismissed. No costs.

JUDGE

APTE