

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

WRIT PETITION NO. 1474 OF 2020

Shri. Mahadeo s/o Dinbaji Sathwane

vs.

Shri. Anandrao s/o Ramkrishna Bicchu (Sonkusare)

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

Court's or Judge's orders

Shri. Amol Hunge, counsel for petitioner.

CORAM : MANISH PITALE J.

DATED : 16/03/2020

By this writ petition, the petitioner has challenged an order dated 06/03/2020 passed by the Joint Civil Judge Junior Division, Umred (Executing Court) whereby an application filed by the respondent decree holder for execution of the decree and removal of encroachment has been allowed and the bailiff has been directed to remove the encroachment as shown in commissioner's report and map and to handover possession to the decree holder.

2. The main ground on which the aforesaid order passed by the Executing Court is being challenged, is that a bailiff report dated 03/07/20218 was submitted before the Executing Court, wherein it was recorded that the decree stood executed to the satisfaction of the respondent decree holder. The said decree had been confirmed against the petitioner upto this Court by

dismissal of Second Appeal.

3. It appears that thereafter an application at Exh.91 was filed by the respondent decree holder under order under Order 26 Rule 9 of the Civil Procedure Code, 1908 (CPC) for appointment of Court Commissioner, since according to the respondent, some portion of encroachment was yet to be removed. The said application was allowed and the Taluka Inspector of Land Records was appointed as Court Commissioner, who was directed to measure the suit property after issuing notice to the rival parties. It is undisputed that in pursuance of the said order passed by the Executing Court, such an exercise was indeed carried out by the Court Commissioner and it came to light that although the decree was earlier executed as per the report of the bailiff, but still an area of about one meter in length was still under encroachment of the petitioner.

4. It is thereafter, that the respondent decree holder filed the application Exh.92-A wherein the impugned order has been passed. The Executing Court has taken into consideration the report of the Court Commissioner and the material on record to come to a conclusion that the aforesaid application filed by the respondent decree holder deserves to be allowed.

5. The learned counsel appearing for the petitioner vehemently submitted that when once the bailiff report dated 03/07/2018, had recorded that the

decree has been executed and it was also counter signed by the respondent decree holder, there was no question of the execution proceedings continuing in the Court below. On this basis, it was submitted that the impugned order was without jurisdiction.

6. A perusal of the material on record, does indicate that bailiff report dated 03/07/2018 indeed recorded that possession of the suit property was handed over to the respondent decree holder in terms of the decree and it also bears signature of the respondent. Yet, there is nothing on record to show that pursuant to the aforesaid bailiff report, the Executing Court had recorded its satisfaction about the decree having been executed and that the execution proceeding were consequently closed. The subsequent event of appointment of Court Commissioner and the report submitted by the Court Commissioner pursuant to measurement undertaken after due notice to the rival parties, indicates that there was still some portion upon which the petitioner had encroached. It is in this backdrop that the Executing Court, not only allowed the application for appointment of Court Commissioner, but after taking into consideration the material that on record, passed the impugned order directing removal of the encroachment found in the report of the Court Commissioner.

7. There is nothing on record to show that the order passed by the Executing Court appointing the

Court Commissioner was ever set aside. There is also nothing on record to show that the report of the Court Commissioner and the map drawn pursuant to measurement undertaken after due notice to the rival parties was made subject matter of challenge in any manner by the petitioner. In these circumstances, merely by relying upon earlier bailiff report dated 03/07/2018, the petitioner is not entitled to challenge the impugned order.

8. Even otherwise, this Court is satisfied after perusal of the material on record that there is encroachment to the extent of one meter as found by the Court Commissioner and that the Executing Court was therefore, justified in passing the impugned order.

9. In view of the above, the writ petition is dismissed.

JUDGE