

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

Writ Petition No. 6889 of 2019

Ramkhilawan Rambharose Sahu (Dead) Through LRs Vs. Chitanjilal
Rambharose Sahu and others

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

Court's or Judge's orders

Mr. M.P. Khajanchi, Advocate for the petitioners
Mr. S.C. Bhalerao, Advocate for respondents No.1.

CORAM : MANISH PITALE, J.

DATED : SEPTEMBER 29, 2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard learned counsel for the petitioner. By this writ petition, the petitioner (original defendant No.3 & judgment debtor) has challenged the order of the Executing Court dated 17/09/2019. It is the contention of the petitioner that the impugned order passed by the Executing Court was beyond the report of the Court Commissioner, which recommended demolition of the entire structure on the plot in question to facilitate proper execution of the decree.

3. Attention of this Court was invited to the decree passed in the present case, which specifically states that it is a preliminary

decree and final decree was to be drawn after measurement by the Commissioner and submission of his report for the same and after demarcating the respective shares in the suit properties. The report of the Commissioner dated 24/06/2015, records the fact that there is some temporary construction in the form of tin shed in the plot with some mud walls. It is also specifically stated in the report that for the shares to be carved out in terms of the decree, the said temporary structure would have to be pulled down so that the suit plot will be open for demarcation. In this context, when the impugned order is perused, it is found that the Executing Court has directed in Clause 3 of the impugned order as follows :

“3. If any construction is found during the execution of warrant then executing officer is directed to remove such shade or construction & handed over vacant possession to the Decree Holder & report to be submitted to this court.”

4. The approach adopted by the Executing Court appears to be erroneous to the extent that removal of only such shed or construction has been directed so as to hand over vacant possession to the decree holder. This in the teeth of the aforesaid report of the Commissioner, which specifically recommended pulling down of the entire temporary tin shed along with mud walls for facilitating execution of the decree by way of carving out shares. The order of the Executing Court to that extent appears to be erroneous.

5. The respondents have entered appearance through counsel and the respondents concedes to the fact that the impugned order of the Executing Court appears to be beyond the

report of the Commissioner.

6. In view of above, the impugned order to the extent of Clauses 2 and 3, is quashed and set aside and it is directed that the entire temporary structure / tin shed with mud walls shall be removed for facilitating execution of the decree by carving out shares in terms of decree passed in the present case. The structure shall be removed within a period of six weeks from today to facilitate proper execution of the decree in question.

7. The writ petition is disposed of in above terms.

JUDGE

MP Deshpande