

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4082 OF 2021

Aadesh Gangaram Gaikwad & Anr. Petitioners

Vs.

Kamal Mahadev Jagtap Respondent

Mr. Sushil D. Shinde for Petitioner

Coram : NITIN W. SAMBRE, J.

Date : 12TH AUGUST, 2021

P.C.:

1. The Petitioner-Judgment debtor suffered an order below Exhibit 13 in Regular Darkhast No. 25 of 2017 in execution of decree dated 22nd January, 2014 passed by the trial Court and confirmed in Appeal on 27th January, 2020 in regard to the permanent and mandatory injunction.

2. The application moved by the Respondent- Decree holder for appointment of Court Commissioner for execution of decree passed

in Regular Civil Suit No. 191 of 2010 for removal of wired compound fixed on wooden pillars has been allowed on 17th June, 2021.

3. While questioning the said order, Shri. Shinde, learned counsel appearing for the Judgment-debtor/ Petitioner would urge that the report of the Court Commissioner dated 11th April, 2012, which is produced at page 108 is suffering from the material irregularity, as according to him, Survey No.93 is shown to be owned by one Anandrao Kokare, whereas in the report, same is shown to be Gayran land.

4. The aforesaid contention, in my opinion, will be hardly of any consequence, particularly when the report of the Court Commissioner dated 11th April, 2012 cannot be assailed in this petition after a period of almost 9 years. What is ordered by the executing Court is to take decree to its logical end by ordering execution of the same through Court Commissioner.

5. Admittedly, the Second Appeal at the behest of the Petitioner/ Judgment debtor is pending, in which no interim relief is

operating. As such the executing Court is justified in proceeding ahead with the execution. No case is made out to interfere in extra ordinary jurisdiction of this Court. The petition fails, dismissed.

(NITIN W. SAMBRE, J.)