

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

WRIT PETITION NO. 3963 OF 2021

Shri Satyanarayan Kanhaiyalal Changgani

...Versus...

Smt. Tejkanwar Wd/o Madanlal Tapdiya and others

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

Court's or Judge's orders

Shri O.Y. Kashid, Advocate for petitioner

CORAM : N.B.SURYAWANSHI, J.

DATE : 08/10/2021

This petition impugns common order passed below Exhs. 34, 36, 37 and 39, whereby the application Exhs. 36 and 37 filed by the petitioner/objector under Order 21, Rule 58 of the Civil Procedure Code came to be rejected.

2. The petitioner/objector filed application Exh.36 in RD 37/2009, contending that possession warrant is issued by the executing Court in favour of the respondents/decreed holders. When the bailiff came for executing the possession warrant, it was realized by the objector that the decree is not proper and if possession is given on the basis of the said decree, irreparable loss will be caused to the objector. It is therefore necessary to carry out measurement of the said property. According to him, he had purchased property No. 5 of ward No. 13

admeasuring 169.66 sq.mt by a registered sale-deed on 14/05/2012. The possession warrant as per the decree is of the room admeasuring 17 Ft. x 20 Ft. In the possession warrant issued, the boundaries of the properties mentioned are abutting to the property purchased by the objector. The room admeasuring 17 Ft. x 20 Ft. was never owned by the decree holder and therefore it is necessary to measure the property i.e. room No. 17 Ft. x 20 Ft. and the property purchased by the objector. The said application came to be rejected by the trial Court observing that the judgment debtor earlier filed application Exh. 27 praying the same relief of measurement by competent authority. That application came to be rejected by holding that the decree holder has already identified the four boundries of the suit property by mentioning the same in the plaint. Therefore the bailiff can give possession as per the boundaries mentioned in the suit property. The executing Court further held that it is clear from the record that the judgment debtor and objector are near relatives. Taking into consideration the boundaries mentioned in the sale-deed of the objector and in the plaint, the property of the decree holders is towards South and North sides. Therefore, the decree holders have given proper identification of the suit property in the plaint as well as in the execution proceedings. Therefore the executing Court has rejected the application Exh.36.

3. On going through the record possible view is taken by the trial Court on the basis of record. I do not find any reason to interfere in the same and no case is made out by the petitioner to interfere in the impugned order. It appears that though the decree is passed in the year 2009 till date the decree holder is deprived of enjoying the fruits of the decree. The present application appears to be filed only with a view to prolong the execution proceedings. There is not merit in the Writ Petition. The Writ Petition is dismissed.

JUDGE