

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 WRIT PETITION NO.336 OF 2022

RAMKUMAR MANGALCHAND KHANDELWAL

VERSUS

SHYAMSUNDAR RAMESHWAR KHANDELWAL
AND OTHERS

...

Advocate for Petitioners : Mr Satyajit S.Bora
Advocate for Respondent No. 1 : Mr R.M. Sharma

CORAM : SANDEEP V. MARNE, J.
DATE : 22nd NOVEMBER, 2022

PER COURT :

1. Petitioner assails order dated 16th December, 2021 passed by the 15th Jt. Civil Judge, Senior Division, Ahmednagar on application below Exh.40 in Final Decree Application No.1/2011. By that order, the executing court has directed petitioner to permit use of stair case through City Survey No. 3255 and to provide Police protection to ensure grant of such access.

2. Mr Bora, learned counsel appearing for petitioner expresses an apprehension that if the Court Commissioner is granted access through the property in possession of petitioner bearing City Survey No. 3255, the decree holder is likely to misuse the same for claiming something over and above the decree. Inviting my attention to the description of the suit property in the plaint, Mr Bora would contend that the property bearing City Survey No. 3255 was never subject matter of the suit.

3. I have perused the order passed by the executing court. Clear finding is recorded therein that for the purpose of partitioning the land at City Survey No. 3254 and 3136 (which was subject matter of the suit), the only possible access is through staircase in land bearing City Survey No. 3255. In that view of the matter, the present petition can conveniently be disposed of with the clarification that the access through the staircase located within the property at City Survey No. 3255 shall be granted only to the Court Commissioner and the same shall not be construed to mean that the decree holder is granted access to use the staircase.

4. Mr Bora fairly submits that petitioner would allow the access to the Court Commissioner on staircase in property to City Survey No. 3255 as directed by the executing Court, and that therefore, there is no need to depute Police officials to ensure such an access.

5. With the above observations, the writ petition is disposed of.

6. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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