

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6334 OF 2015

Laxman Rakhmaji Veer And Others ..Petitioners

Versus

Sonaji Kondiba Rupnar And Others ..Respondents

Mr. Yuvraj V. Kakde, Advocate for the petitioners.

Mr. L.B. Palod, Advocate for respondents no.2A to 2-D, 4 to 6.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th SEPTEMBER, 2022

ORDER :

1. The petitioners are aggrieved by the order passed by the learned 2nd Joint Civil Judge, Junior Division, Shevgaon, below Exhibit-64 in Regular Darkhast No. 12/2002, thereby rejecting the application filed by the petitioners.

2. In Regular Civil Suit No. 78/1991, decree for perpetual injunction is passed in favour of the petitioners on 19.08.1993. The petitioners have filed darkhast for execution of the said decree. The respondents have appeared in the darkhast and opposed it.

3. By filing application Exhibit-64, the petitioners/decree holders contended that in execution Court Commissioner was appointed and he has measured land of burial ground. The Judgment Debtors have objected to the measurement map and claimed that the decree is not executable. It is further contended that since measurement map of the suit property is drawn and the boundaries of the suit property and burial ground are fixed, if the judgment debtors have encroached in the said area they should remove the encroachment at their own cost. There is no appeal or revision filed challenging the decree and the decree has become final. The Decree Holders, therefore, claimed that they be put in actual possession of 10 Are area as per the measurement map. The respondents resisted this application.

4. The Executing Court rejected the application holding that the Court Commissioner's map is required to be proved for which the Court Commissioner needs to be examined and the Decree Holders have never made any effort to prove the measurement map. The Executing Court, therefore, rejected the application. The petitioners are aggrieved by this order.

5. I have given due consideration to the rival submissions made by learned advocate for the petitioners and learned advocate for the respondents. Perused the grounds raised in the writ petition and the citation relied upon by the learned advocate for the respondent.

6. In the judgment and decree passed by the Trial Court in favour of the petitioners, injunction is granted in respect of 10 Are land out of gut no. 131/1/1 of mauje Bodhegaon, Taluka-Shevgaon. It is further mentioned that defendants are directed to remove encroachment, if any, made on the said 10 Are area at their own costs.

7. It is matter of record that the petitioners have failed to give description/boundaries of their property (suit property), admeasuring 10 Are land out of Gut No. 131/1/1 in the execution petition. The Taluka Inspector of Land Record/Court Commissioner informed the Executing Court that the measurement was conducted on 20.10.2004 and accordingly, report is submitted. In 7/12 extract filed in the matter gut no. 131/1/1 is mentioned, however, such sub divisions are not recorded in the record maintained by his office, therefore in the

measurement map area is mentioned out of gut no. 131.

8. Perusal of the measurement of map reveals that the Court Commissioner has not shown sub divisions of gut no. 131. From the measurement map it is not clear as to which exact portion of land is in possession of petitioners being gut no. 131/1/1. In this view of the matter, the Executing Court is justified in holding that the application filed by the petitioners is pre-mature, as the Court Commissioner is yet not examined in the matter. I am, therefore, of the view that the Executing Court is right in rejecting the application filed by the petitioners. However, the Executing Court has erred in framing issues at Exhibit-98 in the execution proceeding, which is not permissible in law. In that view of the matter, the issues framed by the Executing Court at Exhibit-98 are hereby quashed and set aside by allowing the writ petition partly. No costs.

[NITIN B. SURYAWANSHI, J.]