

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

**CIVIL REVISION APPLICATION NO. 49 OF 2022**

Ravindra s/o Ramnath Motghare and others

vs.

Sutradhari s/o Ramdas Shende

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

Court's or Judge's Orders.

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Mr. H. V. Thakur, Advocate for applicants.

**CORAM : MANISH PITALE J.**

**DATE : 10/06/2022**

By this revision application, the applicants have challenged two orders passed by the Executing Court whereby objections raised on behalf of the applicants i.e. original judgment debtors have been rejected and warrants of possession have been issued.

2. The first objection raised as per application at Exh.32, was that the decree was inexecutable for the reason that the exact location of the property is not identified and that there was discrepancy between the boundaries stated in the plaint and the plaint map filed before the Court. On this basis it was contended that unless the suit property was identified, the decree could not be executed.

3. The second objection was raised as per the application at Exh.37, claiming that since the decree holder had failed to bring on record legal representatives of judgment debtor No.2, who had died during the pendency of the present proceeding, the warrants of possession could not be issued.

4. Insofar as the first objection is concerned, as regards the identity of the property, this Court finds that in the plaint filed on behalf of the decree holder the four boundaries of the property were specifically stated. On the basis of the property so identified by the decree holder the parties contested their claims. It is an admitted position that the trial Court, appellate Court and even this Court found in favour of the decree holder and in the absence of any further challenge to the decree, the same stood confirmed.

5. This Court has perused the material on record and it is found that the Executing Court adopted the correct approach on the basis of the material on record to hold that the four boundaries of the suit property were indeed identified and that there was no substance in the contentions raised on behalf of the applicants.

6. The learned counsel for the applicants sought to rely upon judgment of this Court in the case of *Bhupendra s/o Bhagwat Turkar vs. Homraj s/o Zituji Meshram 2014(4) Mh.L.J. 231*, to contend that in case of a boundary dispute, it was always advisable to appoint a Commissioner and to ensure that a map was brought on record on the basis of inspection carried out by a public authority. There can be no quarrel with the proposition laid down in the said judgment but, it would apply to a situation where there is indeed a serious boundary dispute made out by the party seeking appointment of such a Court Commissioner.

7. This Court is convinced that no such case is made out by the applicants and therefore, no fault can be found with the Executing Court having rejected the application at Exh.32 by order dated 20/02/2022.

8. Insofar as application at Exh.37 is concerned, the Executing Court found that at no stage did the judgment debtors inform the Executing Court about the fact that the judgment debtor No.2 had expired. Merely because in one of the proceedings that reached this Court the judgment debtors themselves had applied for bringing on

record legal representatives of the said party, it could not be said that there was default on the part of the decree holder in taking necessary steps before the Executing Court, which would result in a situation where warrants of possession could not be issued.

9. In our system it is seen far too often that all attempts are made by the judgment debtors repeatedly to ensure that the decree holder does not enjoy fruits of the decree. As far back as in 1872, the Privy Council in the case of *The General Manager of Raj Darbhanga vs. Coomar Ramput Singh* [20 ER 912] observed that the real problems for a plaintiff in this Country start when the decree is passed in his favour. More than a century has gone by and the said words hold true even today.

10. This Court finds that application filed before the Executing Court in this case was nothing but, an attempt made on behalf of the judgment debtors to postpone the inevitable.

11. In view of the above, it is found that there is no substance in the present revision application. Accordingly, it is dismissed. The Executing Court to proceed in accordance with law.

**JUDGE**