

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

WRIT PETITION NO.132 OF 2022

Shriram s/o Dattarao Choudhari and another
Vs.
Madhaodas s/o Mohanlal Mundhada

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

Court's or Judge's orders

Mr. O. A. Ghare, Advocate for petitioners.
Mr. P. A. Deshpande, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 23/08/2022

1. Heard Mr. Ghare, learned counsel for the petitioners and Mr. Deshpande, learned counsel for the respondent.

2. The petition challenges order below Exh. 137 dated 30.1.2021 (page 69) whereby the application by the J.Ds. seeking measurement of the suit property, for the purpose of execution of the possession warrant has been rejected and so also the order dated 18.11.2021, whereby the application below Exh.147 for dismissing the execution proceedings as satisfied is rejected (page 79). The petitioner is already suffering a decree in RCS No.295 of 2000 which has been confirmed up to the Hon'ble Apex Court, in pursuance to which, undertaking was given in the form of a pursis that the suit property which was demarcated by letters D E F G in

the plaint map (page 28) had already been vacated by him which pursis is at Exh.59 (page 31), in pursuance thereto the Bailiff had been to the spot to execute the warrant of possession, however the report of Bailiff Exh.142 dated 16.3.2020 indicates contradictory position in as much in one part it indicates that the area shown by letters E F G D E in the plaint map is occupied by the petitioners/judgment debtor and on the line E F G there is a wire fencing, as against which, in later part of the report, he says that the house which is presently occupied by the petitioners is beyond the line E F G, which would indicate that it is beyond the portion D E F G which is the property in the plaint map. This clearly indicates the contradictory position. When the pursis indicates that the land has been vacated and the Bailiff is unable to determine the position as to the plaint property, it would be necessary, for the Bailiff to measure the property and hand over the possession of the same as per plaint map (page 28) as demarcated by the letters D E F G D admeasuring 45 ft. X 10 ft. as indicated therein, to the decree holders.

3. Mr. Deshpande, learned counsel for the decree holders submits that the starting point for measurement of the property indicated in the plaint map, is not in dispute and is identifiable, considering which, the order below Exh.137 is hereby quashed and set aside. The learned trial Court is directed to ask the

Bailiff to measure the property as described in the plaint map (page 28) and hand over the possession to the decree holders on 26.8.2022. It is only upon such delivery of possession that the execution can be declared to be satisfied, considering which, I am not inclined to interfere in the order below Exh. 147.

4. The petition is accordingly partly allowed in the above terms. No costs.

JUDGE

Sarkate