

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8794 OF 2023

**NAGESH EKNATH SARGAIYYE
VERSUS
ASHOK SHAMA SAIGAIYYE AND OTHERS**

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Advocate for Petitioner : Mr. Rahul B. Temak
Advocate for Respondent No.1 : Mr. Shubham Jayabhar, Advocate
h/f Mr. D.R. Jaybhar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 24th JULY, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 15/03/2023, passed by learned Civil Judge, Senior Division, Newasa, below Exhibits – 81, 83 and 88 in Regular Darkhast No.04/2011.
2. Decree was passed in the year 1984 against predecessors of the petitioner, in Civil Suit No.351/1981 filed by one Shyama Kisan Sargaiyye against his real brother Champat Kisan Sargaiyye for partition. The decree was confirmed by this Court in Second Appeal No.371/1990. Legal representatives of the decree holder filed Regular Darkhast No.04/2011 for execution of the judgment and decree dated 29/09/1984. Petitioner filed application Exhibit-81 in the Executing Court for stay of the execution claiming that there was discrepancy in the area of property in two Court Commissioners' reports and the exact area needs to be determined.

The said application is rejected. Hence, the present petition.

3. Heard learned advocate for petitioner and learned advocate for respondent No.1. Perused the writ petition memo, annexures thereto and the impugned order.

4. It appears from record that decree of the year 1984 is still not executed. The petitioner is trying his level best to obstruct the execution proceedings on one pretext or the other. Also, three Court Commissioners, so far, have been appointed, who have given consistent report about measurement of the suit property, which according to them is correct as per the Gram Panchayat record. Petitioner, from time to time, has filed his affidavit that decree holder is entitled for ½ share in the suit property. The other judgment debtors have accepted the Court Commissioners' reports and are ready for execution of the decree. Third Court Commissioner has submitted his report on 25/04/2022.

5. Considering all these facts, the Executing Court has rejected contention of the petitioner that there is difference in the area of suit property mentioned in the Commissioner's report and in the city survey record. Executing Court has observed that judgment debtor/petitioner has not objected measurement of the suit property till the decision in second appeal. Court Commissioners appointed by the Executing Court have filed their reports and

accordingly partition chart is prepared. Southern portion is given to the decree holder and Northern portion is to be given to the judgment debtors. Court Commissioner has measured the property and has given the area.

6. It is further held that, if at all petitioner has any grievance about exact measurement/area of the suit property, he may avail appropriate remedy. Executing Court has, therefore, ordered to issue possession warrant.

7. There is no jurisdictional error or error of law committed by the Executing Court while passing the impugned order. No case is made out by the petitioner to interfere in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)