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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6942 OF 2020

Shamrao Laxman Wagh

PETITIONER

VERSUS

Bala Laxman Wagh (Died) LRs and Others

RESPONDENTS

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Mr. Suresh M. Kulkarni, Advocate for the petitioner

Mr. Anant R. Devakate, Advocate for respondents No.2a, 2b, 3a
to 3e and 5 to 9

Mr. P. N. Kutti, AGP for respondent No.10

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by order dated 13th July, 2020 passed by the learned Joint Civil Judge, Junior Division, Bhokardan below Exhibit-107 in Regular Darkhast No. 13 of 2008.

2. In terms of the decree passed in Second Appeal No.278 of 1987 the petitioner is declared as owner of the suit fields and he is held to be entitled to recover possession of the suit fields from the defendants, which was directed to be restored to him, within two months from the date of order dated 8th July, 2008 passed in the Second Appeal. The defendants unsuccessfully challenged

the said order before the Hon'ble Apex Court.

3. The petitioner filed RD No. 13 of 2008 seeking execution of the decree passed in his favour. The petitioner filed Exhibit-107 in the execution proceedings for demarcation of the suit properties and fixing boundaries, by appointing Deputy Superintendent of Land Records. The respondents objected to the said application.

4. The Executing Court, after hearing the parties and after going through the record, rejected the application. The said order is impugned in the present petition.

5. Heard learned advocate for the petitioner and the learned advocate for the respondents and the learned Assistant Government Pleader. Perused the memo of writ petition, documents annexed with the same and the impugned order.

6. Record indicates that the execution petition is filed by the petitioner for possession of survey No. 11/2 admeasuring 2 Acre 27 Guntha and survey No. 48/7 admeasuring 1 Acre 23 Guntha. Earlier, at the instance of the petitioner, the Executing Court had appointed Court Commissioner for measurement of the suit property. The Commissioner submitted report that sub share i.e. Gut No. 48/7, out of the suit property, is not in existence. It is further stated in the report that after consolidation scheme, sub

shares in the suit properties and areas do not tally.

7. After passing of the said order, pursuant to the order passed by this Court in Writ Petition No. 3529 of 2016, again Court Commissioner was appointed, however, the Court Commissioner submitted report Exhibit-103, reiterating the earlier report. The Commissioner, stated that it is not possible to fix the boundaries and carve out the area of the suit property.

8. The Executing Court has observed in the impugned order that on going through the record of the land survey department, Bhokardan, submitted by the Commissioner, in the form of consolidation scheme extracts and other reports, they do not tally with each other. Consolidation scheme was implemented at Mauje Varud Budruk in the year 1983. Even prior to that there were sub shares of the suit properties i.e. 11/2/A to 11/2/C and 48/7/A to 48/7/D. The suit was initially filed in the year 1977 and at the time of filing of the suit, sub shares ought to have been mentioned. The Executing Court, therefore, was of the view that along with the application Exhibit-107, the Decree Holder has produced certain 7/12 and mutation entry extracts, however, it is not clear from the said extracts that those pertain to the suit properties. The Executing Court, therefore, held that merely because names of the parties tally, it cannot be concluded that

the said properties, mentioned in the extracts, are the suit properties. It is, therefore, held that the decree holder should place on record the complete chain, showing existence of the suit properties and since beginning how the suit properties were transferred. In absence of the said revenue record, boundaries of the suit property cannot be fixed by the Court Commissioner.

9. The Executing Court further held that since the respondents – judgment debtors and the objectors have agreed for the measurement of the suit properties in writ petition No. 3529 of 2016, therefore, their objection, *prima facie* need not be entertained. It is, therefore, held that unless and until existence of the suit properties is established by the Court Commissioner, *prima facie*, the application filed by the petitioner cannot be allowed. With these reasons, the Executing Court has rejected the application and directed the petitioner to make compliance in terms of the order dated 18th November, 2019 passed below Exhibit-1.

10. Upon hearing the rival submissions of the learned advocate for the petitioner and the learned advocate for the respondents and on going through the record, this Court is of the considered view that the approach of the Executing Court is just, legal and proper and needs no interference in the extraordinary writ

jurisdiction. The writ petition being devoid of merit is dismissed.

11. The petitioner is at liberty to comply with the order dated 18th November, 2019 passed by the Executing Court below Exhibit-1 and, thereafter seek appointment of Court Commissioner for fixing of the boundaries.

[NITIN B. SURYAWANSHI]
JUDGE

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