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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12778 OF 2019

Motiram Dagadu Patil

PETITIONER

VERSUS

Uttam Damu Patil

RESPONDENT

.....

Mr. Girish V. Wani, Advocate for the petitioner

Mrs. Surekha. G. Chincholkar, Advocate for the respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd AUGUST, 2023

ORDER :

1. Application Exhibit-43 filed by the petitioner – decree holder, seeking appointment of Court Commissioner to inspect and measure the disputed lane and submit a detail report, is rejected by the learned Civil Judge, Junior Division, Jamner in Regular Darkhast No. 1 of 2017.

2. In Regular Civil Suit No. 1 of 1996, a decree is passed in favour of the petitioner in following terms:

“1. *Suit is decreed with costs.*

2. *Issue perpetual injunction restraining the defendant from causing obstruction to the plaintiff in using southern side disputed suit lane of house no. 41 situated at Kasba Pimpri, Tal. Jamner for taking*

bullock carts etc.

3. *Decree be drawn up accordingly.”*

3. The petitioner filed RD No. 1 of 2017 for execution of the decree, since he was facing obstruction. In the execution proceedings, application Exhibit-43 for appointment of Court Commissioner is filed by the petitioner, contending that it is necessary to appoint Court Commissioner to ascertain whether tractor and trolley can be used by the decree holder and what form of obstruction is caused while the decree holder takes his bullock cart in the said lane. The said application was opposed by the respondent – judgment debtor, contending that the decree holder is entitled to carry only bullock cart and not motorized vehicles like tractor and trolley. The Executing Court has rejected the application of the petitioner holding that -

“8. It is settled principle of law that the Court Commissioner can be appointed for inspection of suit property and its actual position. It is pertinent to note here that the decree was passed wherein injunction was saddled against defendant not to obstruct in the bullock cart etc. But on going through the entire contents of Judgment, nowhere it found the width of road either proved or admitted and which become part of decree. Now, after so many years from passing decree the D. H. come to get the width confirm. Apart from this there would be no straight jacket formula

that 8 ft width road is sufficient for playing tractor in lane. Even no document is produced on record which suggest the lane is approximately 8 ft. in width except the contents of plaint of the plaintiff. Therefore, it would not proper to grant commissioner to inspect said lane.”

4. Heard learned advocate for the petitioner and the learned advocate for the respondent. Perused the memo of writ petition, annexures and the impugned order.

5. It is a matter of record that during the course of hearing of Regular Civil Suit No. 1 of 1996, Court Commissioner was appointed and his report is at Exhibit-21. The Court Commissioner has specifically mentioned in the report that width of the lane in dispute is 8 feet. It is further stated in the report that the judgment debtor has tap connection towards southern wall in the lane and he has dug a pit for the said tap connection. In the judgment also, there is a specific reference of Commissioner's report and the 8 feet width of the lane, in paragraph No. 21 of the judgment in RCS No. 1 of 1996.

6. In the light of injunction clamped against the respondent – judgment debtor, it is not possible to accept the contention of the respondent – judgment debtor that the decree holder is not entitled to carry any motorized vehicle from the lane and he is

only entitled to carry bullock cart and other agriculture equipment. The word "*etc.*" in the decree is being wrongly interpreted by the judgment debtor as well as by the Executing Court.

7. Since for effective execution of the decree, present day position of the said lane is required to be brought on record, the application filed by the petitioner – decree holder ought to have been allowed by the Executing Court. The impugned order is contrary to the record, the same is unsustainable and is liable to be quashed and set aside. In the result, following order:

ORDER

- A. Writ petition is allowed.
- B. Impugned order dated 6th June, 2019 passed by learned Civil Judge, Junior Division, Jamner below Exhibit-43 in Regular Darkhast No. 1 of 2017 is quashed and set aside.
- C. Application Exhibit-43 in RD No. 1 of 2017 is allowed.

[NITIN B. SURYAWANSHI]
JUDGE