

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

WRIT PETITION NO. 9968 OF 2017

Raju Tanhuba Aher and others .. Petitioners

Versus

Sulochanabai Narayan Murme
and others .. Respondents

Shri Pramod F. Patni, Advocate for the Petitioners.

Shri Mahesh S. Taur, Advocate for the Respondent Nos. 1 and 3.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 20TH JANUARY, 2023.

FINAL ORDER :

. Heard.

2. The petitioners are aggrieved by the order dated 25th July, 2017 passed in R. D. No. 06 of 2013, wherein arrest warrants have been issued against the petitioners for non compliance of the decree dated 20th June, 2012 passed in R.C.S. No. 74 of 2010.

3. R.C.S. No. 74 of 2010 was filed by the respondent No. 1 seeking an order of permanent injunction restraining the respondent No. 3 and the petitioner No. 4 herein from obstructing respondent No. 1's possession over the suit land bearing gut No. 30 adm. 54R and gut No. 31 adm. 25R. R. D. No. 06 of 2013 was filed by the respondent No. 1 claiming that during the pendency of proceedings twice area was sought to be measured, however, the petitioner No. 4 has obstructed the measurement and has encroached upon her area and as such the

boundaries in respect of her area i. e. gut No. 30 admeasuring 54R and gut No. 31 adm. 25R could not be determined. It was further contended that present petitioner Nos. 1 to 3 are claiming rights in the said property through the petitioner No. 4 and have also encroached upon her property. To the application of the Respondent No 1, the petitioner Nos. 1 to 3 filed their reply and contended that the respondent Nos. 2 and 3 had sold their share of 26R in gut No. 31 to the petitioners, which in turn was sold by the petitioner No. 4 to petitioner Nos. 1 to 3. As the execution application sought detention of the petitioners in civil prison, it was contended by the petitioner Nos. 1 to 3 that they are neither parties to the original proceedings, nor the parties to the execution proceedings, but are subsequent purchasers of the property and hence their detention in civil prison is unwarranted and in any event show cause notice is required to be issued against them. By the said application, the petitioner Nos. 1 to 3 also sought demarcation of their respective gut numbers to ascertain proper share of the parties.

4. By order of 21st April, 2017, the Executing Court held that the show cause notice has already been issued against petitioner Nos. 2 and 3 and the petitioner No. 4 and presently since the area which was in possession of the petitioner No. 4 has now been sold to the petitioner Nos. 1 to 3, as per law the Court should also proceed against them to execute the decree. Consequently, show cause notices were directed to be issued to petitioner Nos. 1 to 3 as to why they should not be sent to civil prison. By the impugned order, the arrest warrants were issued against the petitioners.

5. Perused the material on record with the assistance of the learned counsel for parties.

6. In the present case, by a very cryptic order arrest warrants have been directed to be issued not only against the petitioner No. 4 who was original party to the proceedings, but also as against petitioner Nos. 1 to 3, who were neither party to the original proceedings, nor party to the execution proceedings. It is apparent from the plain reading of the impugned order that the Executing Court has not taken into consideration the contention of petitioner Nos. 1 to 3 that the area is required to be measured and boundaries ought to be determined in order to ascertain the areas which were in possession of the petitioner No. 4 and as now was sold to others.

7. Learned counsel for the respondent No. 1 fairly concedes that the issue of the encroachment and the non obedience of the decree of the year 2012 can be concluded upon the proper measurement of the area and demarcation of the respective shares. Both the Counsels for the parties are ad-idem that the respective properties are necessary to be measured and demarcated.

8. Considering the above, the impugned order dated 25th July, 2017 issuing arrest warrants against the petitioners is hereby quashed and set aside. The area of gut No. 31 and 30 to be measured jointly through T.I.L.R. in presence of both the parties and the area owned by the respondent No. 1 as claimed in the suit i. e. gut No. 30 adm. 54R and gut No. 31 adm. 25R and properly described in the suit be demarcated. Measurement to

be carried upon an application made by both the parties jointly, the cost whereof to be borne by both the parties in equal proportion.

9. Writ petition is disposed of in above terms.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23