

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10761 OF 2019

Chandan Bhagoji Tirmare Deced. Thr.
Heirs and Ors. ... Petitioners

V/s.

Manik Raju Tirmare Decd Thr. Heirs ... Respondents

Mr. Gangadhar J. Sabnis, for the Petitioners.

Mr. Mandar Limaye, for the Respondents

CORAM : AMIT BORKAR, J.

**DATED : SEPTEMBER 25,
2023**

P.C.:

1. By the impugned order, the Executing Court has directed delivery of possession under Order 21 Rule 35 of the Code of Civil Procedure, 1908. The execution is filed based on decree passed in Regular Civil Suit No.210 of 1974. The decree is confirmed in Regular Civil Appeal No.74 of 1981.

2. In Civil Revision Application No.261 of 1986 arising out of order passed in execution application, this Court directed appointment of Court Commissioner. In furtherance of said order, Court Commissioner was appointed and he filed report on 5th December 2017. The Executing Court based on aforesaid report directed delivery of possession.

3. According to the petitioners CTS Nos.1043 and 1044 are not owned by the decree holder.
4. Since the suit was for possession based on title, it is not open for the Executing Court to hold an inquiry into title of decree holder on an application filed by judgment debtor who was party to the said suit.
5. Therefore, there is no illegality in the order passed by the Executing Court.
6. The writ petition is, therefore, dismissed.

(AMIT BORKAR, J.)