

VRJ

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

WRIT PETITION NO.5550 OF 2023

VAIBHAV
RAMESH
JADHAV
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VAIBHAV RAMESH
JADHAV
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Machhindra Rangnath Badade

... Petitioner

V/s.

Ravaso Rangnath Badade

... Respondent

Mr. Rakesh K. Agrawal with Mr. Dorpan Jain for the
petitioner.

Mr. Shankar Kattar i/by Ms. Manisha Devkar for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

PC.:

1. Challenge in this petition is under Article 227 of the Constitution of India is to the order passed by the executing court directing the petitioner to make open the road which was subject matter of consent terms executed in the year 2005.

2. According to the petitioner, he has executed registered conveyance of the property in favour of one Subhash Dhukte on 1st March 2011 for consideration of Rs.3,55,000/-. He has placed on record copy of registered sale deed. He states that possession of property which was subject matter of sale deed was also delivered to Subhash Dhukte. Therefore, it is necessary that transferee of suit property needs to be made party to the execution.

3. However, it is made clear that the decree still binds the petitioner to the extent that he shall not disturb judgment debtor from using right of way which is subject matter of consent terms.
4. It shall be open for the decree holder to add Subhash Dhukte as a party to the execution. Since, Subhash Dhukte is claiming rights conferred on him after the execution of decree, Subhash Dhukte would be bound by the decree being transferee of the rights of the present petitioner.
5. With above two clarifications, the impugned order directing petitioner to make open right of way is set aside.
6. However, the petitioner shall not obstruct decree holder from using the road which was the subject matter of compromise in Regular Civil Suit No.113 of 2002.
7. With this, the civil writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)