

SA Pathan

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

WRIT PETITION NO.12723 OF 2019

Dagdu Gangaram Kirve
Through Power of Attorney
Kishor Dagdu Kirve

... Petitioner

V/s.

Sakharam Gangaram Kirve

... Respondent

Mr. Nitin Gaware Patil i/by Mr. Prashant Darandale, for
petitioner.

Mr. Rajendra M. Haridas, for respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 5, 2023

P.C.:

1. The judgment debtor of suit for partition and possession has filed the present writ petition challenging order passed by the Executing Court directing to hand over possession of House No.438 to the decree holder.

2. Undisputedly, the decree sought to be executed in execution is preliminary. Unless there is final decree in relation to possession of house property, the Executing Court could not have ordered possession of the house property. Therefore, such writ petition needs to be allowed with clarification that the order of possession of suit property can be passed only after passing of final decree. Hence, following order:

a) The impugned order dated 20 November 2019 passed by the Civil Judge, Junior Division, Taluka Mahad, District Raigad under Exhibit 86 in Regular Darkhast No.20 of 2008 is quashed and set aside.

3. The writ petition stands disposed of.

(AMIT BORKAR, J.)