



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1536 OF 2022

ABHIMAN MAROTI DOIFODE
VERSUS
BHIMRAO VITHOBA MUNDE

Mr. A. L. Kanade, Advocate for the petitioner
Mr. R. V. Gore, Advocate for respondent

CORAM : R. M. JOSHI, J.
DATE : 27th JUNE, 2024

PER COURT :-

1. The judgment debtor in Regular Darkhast No. 183 of 2012 takes exception to the impugned order dated 06/12/2021 passed below Exhibit 47 whereby the Court has appointed T.I.L.R., Beed as Court Commissioner to measure the suit property as well as gut No. 288 at villlage Doifodwadi, Taluka and District Beed.

2. Learned counsel for the petitioner submits that the Execution Court has committed error in allowing the said application without Decree Holder leading any evidence to indicate that the boundaries of the suit properties are changed. It is submitted that previous two applications filed below Exhibits 31 and 41 before the Execution Court were rejected on this ground, which orders were upheld by this Court. It is thus his contention that in absence of any evidence being shown by decree holder regarding change in the boundaries, the order of appointment of Court Commissioner to measure the suit property is not

justified.

3. Learned counsel for the respondent/decreed holder submits that owing to the difficulties as disclosed in the application, decreed holder could not lead evidence but having regard to the peculiarity of the fact of the case, the order impugned need not be interfered with.

4. Perusal of orders passed below Exhibits 31 and 41 clearly shows that the Execution Court has refused to exercise the powers under Order 26 Rule 9 of the Code of Civil Procedure for appointment of Court Commissioner with observation that the decreed holder has failed to show any evidence indicating change in the boundaries as claimed by him though orders have attained finality. In such circumstances, it was not open for learned Execution Court to pass order of appointment of Court Commissioner unless finding is recorded that the decreed holder has led evidence to show the changes in the boundaries of the property proper in question.

5. The impugned order, therefore, is set aside. Needless to say that the observations made herein above would not preclude any party to take appropriate stage in accordance with law.

6. Petition stands disposed off.

(R. M. JOSHI, J.)

ssp