



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

WRIT PETITION NO.10785 OF 2023

- 1] Smt. Rangubai wd/o Wamanrao Siraskar
Age 72 years, Occ. Household.
- 2] Gangadhar s/o. Wamanrao Siraskar
Age 32 years, Occ. Agriculture
Both R/o. New Mondha, Palam,
Tq. Palam, District Parbhani. .. **PETITIONERS**

VERSUS

- 1] Kisanrao s/o. Annasaheb Siraskar,
Age 66 years, Occ. Nil,
R/o. Palam, District Parbhani
At present Sunutri, Building No.27,
Defence R & D Co-operative
Housing Society, Alandi Road,
Pune.
- 2] Vasantryao s/o. Dasrao Siraskar,
Age 41 years, Occ. Agri. & Business,
R/o. New Mondha, Palam,
Tq. Palam, District Parbhani. .. **RESPONDENTS**

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Mr.V.D.Hon, Senior Advocate i/b. Mr.A.V.Hon, Advocate for
the petitioners
Kisanrao Annasaheb Siraskar – respondent no.1 – party in
person.

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 21.03.2024
Pronounced on : 06.05.2024

JUDGMENT :

1] By the present Writ Petition, the petitioners are challenging the order dated 05.08.2023 passed by the Civil Judge Senior Division, Gangakhed below Exh.59 and 72 in Special Darkhast No.3 of 2024 whereby the applications filed by the petitioners – objectors are dismissed by the Executing Court.

Facts giving rise to the filing the present petition can be briefly summarized as under:

2] The Special Civil Suit No.45/2009 was decreed by order dated 19.07.2014 by the trial Court. The suit was for recovery of possession of Plot No.38 [Now House No.1391], admeasuring East-West 25 ft. and South-North 100 ft., bounded as East-Farkanda Road, West-Plot of Pawar, South – Mondha Road and North – Mondha Road. One Vasant Dasrao Siraskar was the defendant. The said decree came to have been confirmed by the High Court in Second Appeal No.702 of 2017 dated 17.10.2018. Moreover, the Hon'ble Apex Court also dismissed Special Leave Petition

No.7387/2019 on 29.03.2019. Thus, the decree passed in Special Civil Suit No.45/2009 attained finality. Thereafter, the decree holder applied for execution of the decree.

3] Thereafter, in the execution proceedings one Rangubai Siraskar and another have filed application below Exh.59 under Order 21 Rule 97 r/w. Section 47 of Civil Procedure Code, so also, the application below Exh.72 for appointment of TILR to measure the suit property along with their own.

4] The petitioners - opposite party came with the case that the suit property as mentioned in Special Civil Suit No.45 of 2009 is next to their property. They own survey No.129/3 now known as House No.1985 admeasuring 15 Ft. and South-North 100 ft. and House No.1986 admeasuring East-West on Southern side 15 ft and East-West on northn side 05 ft. and South North 100 ft., since both the properties are combined so bounded as East-West Palam-Farkanda Road, West-suit property of D.H., South-north – Road.

5] On consideration of the material placed on record, by order dated 05.08.2023, the Executing Court at para no.11 and 12 has held as under :

11- However, in the case in hand, the O.P.s except Assessment Extracts, that too, cannot be the title documents, have not filed any cogent title documents showing them the owner of property within the four boundaries as claimed by them. Therefore, the judgments cited supra with due respect to the ratios, found not applicable to the case in hand.

12- Needless to say, the person challenging the established rights of a decree holder, ought to be armed with cogent documents in order to shake the established rights. However, the O.P.s have filed only assessment extracts which are only for fiscal purpose and they cannot be the substituted for title documents.

Thereafter, by the aforesaid order, the applications filed by the petitioners at Exh.59 and 72 were rejected.

6] The learned counsel appearing for the applicant has produced a map at page 51 of the petition and

contended that the petitioners have got decree qua the property mentioned in the plaint and adjacent to the plaintiff's property is the property of the present petitioners and the property of the petitionerse is sought to be given in the execution to the decree holder. After arguing for sometime, the learned Senior Counsel for the petitioners submits that let the Taluka Inspector of Land Records be appointed and in terms of the decree, the measurement be carried out and the decree holder be given possession of the land as mentioned in the decree and balance land remaining on the adjacent to the land of the plaintiff as contended by the petitioners belong to him and that the same be not handed over to the decree holder and his possession on the land beyond the decree be not disturbed.

7] Submission of the learned Senior Advocate appears to be fair and which is also not opposed by the decree holder.

8] In view of the same, it is directed that the Executing Court may appoint Taluka Inspector of Land

Records [TILR] for measurement of the suit property and the same be handed over to the decree holder in terms of the decree to the extent of the property mentioned in the decree. No further land be handed over to the decree holder beyond the land mentioned in the decree. The decree holder to be given possession of property as described in the plaint total admeasuring 2500 sq. ft.

9] With the above observations, the present Writ Petition stands disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC