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

CIVIL WRIT PETITION NO. 1041 OF 2025

Prakash Daulatrao Nalawade

...Petitioner

Versus

Vijaya Daulatrao Nalawade & Ors

...Respondents

Mr. Bhushan Mandlik, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATE: 30th JANUARY 2025

ORDER:-

1. Heard the learned Counsel for the Petitioner.
2. The Petitioner-a Judgment Debtor, who unsuccessfully resisted the Special Civil Suit No. 362 of 1997 up to this Court and eventually suffered the execution of the decree by delivering up the possession of the suit property in Regular Darkhast No. 201 of 2018, is aggrieved by an Order passed by the learned Civil Judge, Kolhapur on 2nd September 2024 whereby the learned Judge emphatically repelled an endeavour of the Petitioner to open another front by filing an Application *inter alia* for re-measurement of the suit land contending that the satisfaction of the decree was faulty.
3. The substance of the contention of the Petitioner (Judgment Debtor-Opponent No.3) was that the map B2 prepared during the

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course of the final decree proceeding indicated that the shares to be allotted to the Plaintiff and the Petitioner were almost equal. However, in fact, the area allotted to the Plaintiff, in the execution of the decree, is 877.25 sq ft and the area which remained with the Petitioners-JD is hardly 500 sq ft. It is, therefore, necessary to appoint a Commissioner, remeasure the land and allot the portions of the suit property in accordance with the shares of the parties.

4. The learned Civil Judge was of the view that pursuant to the possession warrant the decree was executed in the presence of the parties, including the Petitioner, and the specified portions of the suit property, as indicated in map B2 were delivered to the respective sharers and the endeavour of the Petitioner was to prolong the litigation.

5. Mr. Mandlik, learned Counsel for the Petitioner, made an earnest endeavour to persuade the Court to hold that the satisfaction of the decree is not in accordance with law and equitable. A direction of re-measurement would advance the object of division of the property in accordance with the order passed by the court in Final Decree proceeding by Judgment and Order dated 11th December 2017.

6. I am unable to persuade myself to agree with the submissions of Mr. Mandlik. The map B2 forms part and parcel of the order passed in Final Decree No. 9 of 2008. The possession warrant came to be issued

on the basis of the said map B2. The Bailiff Report indicates that the property was divided and possession was delivered to the respective sharers by fixing the boundaries in accordance with the map B2. The execution proceeding attained finality with the delivery of the possession on 27th September 2023. It was too late in the day for the JD-Opponent No.3 to re-agitate issue of the division of the suit property on the ground that it is inequitable.

7. The learned Judge thus committed no error in rejecting the Applicant to virtually reopen the entire litigation disguised as an application under Section 47 of the Code of Civil Procedure 1908 (“The Code”). No interference is thus warranted in exercise supervisory writ jurisdiction.

8. Hence, the following order.

ORDER

- (i) The Petition stands dismissed.
- (ii) No costs.

[N. J. JAMADAR, J.]