

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8227 OF 2015

Dwarkanath Kashiram Shetye (deceased)
by LRs

...Petitioners

Versus

Veerkumar Balkrishna Shetye and ors.

...Respondents

Mr. Bhushan Walimbe, a/w Mayank Tripathi, for the
Petitioners.

Mr. Sandeep Jinsiwale, for Respondent No.1.

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CORAM: N. J. JAMADAR, J.

DATED: 22nd JANUARY, 2025

ORDER:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 25th July, 2015 passed by the Executing Court on an application (Exhibit-47), whereby the Executing Court appointed the TILR, Ratnagiri, as a Court Commissioner, for execution of the decree passed in Regular Civil Suit No.370 of 2000 as modified in Regular Civil Appeal No.52 of 2005. The TILR further directed to hand over possession of decree-holder's 1/3 share in respect of House No.541 and hand over the possession of House No.1278 completely to the decree holder.

3. The subject matter of Regular Civil Suit No.370 of 2000 was the land bearing old Survey No.35(B) new Survey No.125 admeasuring 1.77Are consisting of Grampanchayat House No.541 (old No.466). It was the contention of the Judgment Debtor that both house properties 541 and 1278 formed part of Survey No.125 and the order passed by the Executing Court would amount to modification of the decree in the sense that in addition to House No.1278, in its entirety, the decree holder would get 1/3 share in House No.541.

4. In view of the aforesaid controversy, by an order dated 4th September, 2015, this Court had appointed and directed the TILR to carry out the measurement as to the area of the houses in the possession of the petitioners and the respondents, and also the land, and submit report to this Court within a period of three weeks thereof.

5. The Deputy Superintendent, Land Record, Ratnagiri, has submitted a report on 30th September, 2015. The map annexed to the report indicates the area in the possession of the respective parties.

6. In the backdrop of the said report, now it would be for the Executing Court to pass appropriate orders in the execution proceeding so as to ensure that the execution is

strictly in terms of the decree passed in Regular Civil Suit No.370 of 2000, as modified in Regular Civil Appeal No.52 of 2005.

7. Mr. Walimbe, the learned Counsel for the petitioners, submitted that the petitioners are willing to buy the share of the decree-holders in accordance with the provisions contained in the Partition Act and also offer alternate land to the decree holders. These questions would be required to be considered by the Executing Court, in accordance with law.

8. Subject to the aforesaid directions, the order passed by the Executing Court stands quashed and set aside.

[N. J. JAMADAR, J.]