



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 6238 OF 2024

(Motiram s/o Hari Bramhankar and others vs. Late Shri Yashwant s/o Sawji Waghmare (dead)
through legal heirs)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. A. N. Vastani, Advocate for petitioners.
Mr. V. R. Borkar, Advocate for respondents.

CORAM : SIDDHESHWAR S. THOMBRE, J.
OCTOBER 06, 2025

- 1) Heard Mr.Vastani, learned counsel for the petitioners and Mr.Borkar, learned counsel for respondents.
- 2) The petition is filed against the order dated 25/08/2023 passed by the 3rd Joint Civil Judge Junior Division, Gondia, whereby the application filed by the petitioner for dismissal of Execution Petition came to be rejected.
- 3) Learned counsel for the petitioners submit that the respondent filed Regular Civil Suit No.150/2005 before the Civil Judge Junior Division, Gondia for possession, permanent and mandatory injunction and same was dismissed by 4th Joint Civil Judge Junior Division Gondia. Being aggrieved by the same, he filed an appeal, which was partly allowed and matter was remanded back for deciding the issues. The 3rd Joint Civil Judge Junior Division, Gondia dismissed R.C.S.No.150/2005. The plaintiff (decree holder) filed R.C.A.No.128/2014 which was allowed. Thereafter, the judgment debtor filed Second Appeal and same was dismissed, and Special Leave Petition No.21789/2023 was also dismissed by the Hon'ble Apex Court. The decree holder filed Execution Petition for possession of the suit property. In Execution Petition an application was filed for possession warrant and on 21/06/2023 the warrant could not be executed, as the

bailiff could not locate the suit property with the boundaries as mentioned in possession warrant and same was reported. Therefore, the application was filed by the judgment debtor for dismissal of the execution proceeding on the ground that as per the bailiff report, there was no consistency in Gat No. 145 and 128 having old Gat No. 504 & 528 vis-a-vis boundaries on the spot and consequently the possession could not be delivered. Therefore, on that count, it was stated that the decree is non-executable and by application below Exh.46, the judgment debtor prayed to dismiss the Execution Petition. After filing this application, the learned 3rd Jt.C.J.J.D. Gondia considered the entire record and passed reasoned order.

4) I have gone through the documents placed on record by the petitioner, more particularly bailiff report and the findings recorded by the learned 3rd Jt.C.J.J.D. Court has observed that the Executing Court cannot travel beyond the decree under execution and decree in R.C.S. No.150/2005 is executable. Executing Court further observed that decree holder has given correct description of the suit property i.e. plot No.55 allotted to the plaintiff/decreed holders and defendants/Judgment debtors have made encroachment upon the suit property and constructed house. Learned Executing Court further observed that the document filed by the judgment debtor No.1 shows that, the survey number and gat number of land went on changing in the course of time. The learned Executing Court rightly rejected the application. Therefore, I do not find any merit in the present writ petition. Accordingly, the Writ Petition is dismissed. No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)