

MHAU060000622004



R.D. No.10/2004.
Vitthabai Vs. Goba and others

ORDER BELOW APPLICATION VIDE EXH.110.
(Order delivered on 12.04.2022)

1. The present application is filed by the judgment debtors for appointment of Court Commissioner for measurement of land survey No.148/1, 155/1 and 156/2 situated at village Kolwadi, presently village Sitanaik Tanda, Tq. Kannad, Dist. Aurangabad.

2. It is contended by the judgment debtors that, the decree holder has claimed possession of Gat No.126 at village Sitanaik Tanda and has given boundaries in the execution proceedings. The decree holders had not mentioned the boundaries in the plaint. The decree holder filed an application below Exh.37 for appointment of court commissioner for ascertaining the boundaries of the suit property and at Exh.85 report of court commission is filed. On perusal of said report it appears that, the boundaries mentioned in said report and Exh.37 are totally different. The decree holder had filed her affidavit in second appeal No.33939/2010 and stated few facts. The judgment debtor No.1 and 2 are claiming their property which is in survey No.156/2. Therefore, the properties of decree holder and judgment debtor No.1 and 2 are different. The boundaries mentioned in Exh.85 are totally different and if court commissioner is appointed then the matter will be resolved. Therefore, the judgment debtors prayed for allowing present application.

3. The decree holder has filed his say at Exh.113 and submitted that, even if the boundaries were not mentioned in the plaint the judgment

debtors never objected to it. On 25.09.2013 court commissioner was appointed and the court commissioner has filed his report on 06.01.2014. To said report judgment debtors never raised any objection. The court commissioner has given the details of the adjoining land holders of Gat No.126 in detail. Since 2004 to 2013 there are changes in the ownership however, the Gat Number has not change. Therefore, there is no need of appointment of court commissioner. Present application is filed only to prolong present matter and hence, it may be rejected.

4. Perused record. Heard both parties. Present execution is filed in the year 2004. Admittedly the boundaries of the suit properties were not mention in the plaint. The decree in present proceeding is confirmed upto Hon'ble Supreme Court. The decree holder had filed an application below Exh.37 for appointment of court commissioner and accordingly the court commissioner had filed his report below Exh.65 and 85. The judgment debtors had filed an application below Exh.80 for appointment of court commissioner which was rejected on 28.08.2013 and again the judgment debtors had filed application below Exh.89 for appointment of court commissioner which was rejected on 21.02.2014.

5. The judgment debtors had preferred various writ petitions and order passed in said writ petitions are filed on record. On perusal of order dated 06.12.2018 of Hon'ble Bombay High Court bench at Aurangabad in writ petition No.5338/2014, 3854/2014 and 5339/2014 it appears that, the Hon'ble High Court has discussed the issue regarding the court commissioner in present matter and have observed that the suit property is identified accordingly and it is also observed that, that present proceeding is filed only to prolong the matter. Hence, from all above it is apparent and clear that, there is sufficient record to identify the suit property and time and again the judgment debtors have sought to appoint court commissioner

and said application is rejected, which order is confirmed to Hon'ble High Court. Therefore, there is no merits in present application and hence, it is required to be rejected. Hence, following order is passed;

ORDER

Application Exh.110 is hereby rejected.

Date: 12.04.2022.

(Pankaj K. Ahir)
Civil Judge, J.D.,
Kannad.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word as per the original Order.

Name of the Stenographer : K. G. Khaire
Court : C.J.J.D. & JMFC, Kannad.
Date : **12/04/2022**
Order signed by the
presiding officer on : **13/04/2022**
Order uploaded on : **16/04/2022**

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