

ORDER BELOW EXH.48

(Passed on 19th August, 2019)

1. The present application is filed by the decree holder for demolition of entire construction erected by JD's on the suit property.
2. The DH submits that in the present execution she had obtain permission for possession. Accordingly, bailiff visited suit property and found that JD's raised construction (hut) over the suit property. JD's had knowledge of entire proceeding and had knowledge that their possession is illegal and despite they erected hut. Entire act of the JD's is only to defeat the fruits of the decree. Therefore, the DH filed the present application for demolition of construction over the suit property erected by the JD's.
3. JD's had filed a reply to the present application at Exh.51 dated 01-10-2018. JD's have specifically denied all averments made by DH in the present application. In special pleadings JD's have submitted that suit is decreed for perpetual injunction and not for mandatory injunction. JD's further submitted that it cannot be held that the structure mention in the bailiff report is at exactly on the suit property. Therefore, present application of the DH does not survive at this stage. It is very necessary to boundarycally identification of the suit property by the expert. Therefore, JD's prayed to reject the present application.
4. Heard learned advocate P.Z. Shaikh for the DH and learned advocate B.T. Maskare for JD's.
5. Perused the record. After perusal of record it appears that DH had filed the Regular Civil Suit No.48/2000 against JD's for perpetual injunction. In said suit JD's filed a counter claim.

Accordingly, on 30-01-2008 Regular Civil Suit No.48/2000 was decreed and counter claim was dismissed. After that the DH filed present execution proceeding on the basis of judgment and decree passed in Regular Civil Suit No.48/2000. Now, coming towards the present application, the decree holder filed the present application for demolition of entire construction erected by JD's on the suit property. After perusal of record, judgment and decree and other relevant documents on record, it clearly shows that the decree holder filed a Regular Civil Suit No.48/2000 against JD's for perpetual injunction. DH filed a simplicitor injunction suit against JD's. In present application DH seeking permission for demolition of entire construction erected by JD's on the suit property. It is well settled law that executing court cannot go beyond the judgment and decree. The present execution proceeding filed against Regular Civil Suit No.48/2000, which is only a simplicitor injunction suit. In that suit no remedy sought for recovery of possession. Therefore, in such facts, circumstance and legal position DH is not entitled for demolition of entire construction erected by JD's on the suit property. So, in the interest of justice, I proceed to pass the following order.

ORDER

The present application is hereby rejected.

Sd/-

Date:- 19-08-2019

Mohmad Wasim Akram
S/o Mohmad Jalal Sheikh
Civil Judge Junior Division
Deori.