

MHNG180005072011



**ORDER BELOW EXH. 55**

**NARENDRA VS. DAULATRAO**

**(Passed on this 29<sup>th</sup> January, 2022)**

1. Present application is filed by Jdr. No. 7. It is contended in the application that the Decree holder has manipulated the boundaries of suit property in draft sale deed. It is further contended that, the boundaries which are mention in agreement dtd. 28.12.2001 is totally different. Furthermore, there is only reference to one schedule property in the agreement dtd. 28.12.2001. However, in the draft sale deed DH. included two separate properties. In this way the DH. played fraud on the Court. On these grounds, Jdr. No. 7 has prayed to dismiss the present execution.

2. Decree holder filed his say overleaf the application. It is contended that, original suit was filed regarding two properties. Furthermore, application is not tenable. Sufficient opportunities were granted to Jdr. to file their objections to draft sale deed. However, they have not filed their objections. On these grounds DH. Prayed to reject the application.

3. Gone through contents of the applications. One of the objection of Jdr No. 7 is that agreement to sale dtd. 28.12.2001 was related to only one property. On these ground perusal of record is necessary. Record shows that, the DH. has filed certified copy of Judgment passed in Special Civil Suit No. 71/2004 Narendra Vs. Daulatrao vide Exh. 3. Paragraph No. 2 of the Judgment contain the

facts of the case. Wherein it is mention that, on 28.12.2001 the defendant executed an agreement for sale in respect of land bearing survey No. 345 admeasuring 1 H. 64 R and survey No. 346 admeasuring 1 H. 70 R. of mauza Kalambi Tah. Kalameshwar, District Nagpur. In the said Judgment these properties are mention as the "Suit Properties". After trial the said suit decreed with costs and decree was passed accordingly. As per operative order of decree, the defendant was directed to execute sale deed in respect of suit property in favour of the plaintiff within 3 months from the order. Documents i.e. copy of Judgment passed in Spl. Civil Suit No. 71/2004 and Decree shows that, survey No. 345 and 346 were the suit properties. I would like to mention here that, I found no ambiguity in the Judgment about the survey number of the properties. It is well settled principle of law that executing court can not go behind the decree. Therefore, I found no substance in the contention of Jdr. that agreement dtd. 28.12.2001 was related to only one schedule property.

4. Second objection of the Jdr. No. 7 is that, four boundaries of the suit properties mention in the draft sale deed is not in accordance in the agreement dtd. 28.12.2001. I would like to mention here that, the DH. has filed 7/12 extract of the suit property and map prepared by Gram Adhikari, Saja No. 25, Tah. Kalmeshwar on record. It is necessary to mention here that, LR's of the original defendant appeared in the proceeding on 08.04.2019. Thereafter, order was passed below Exh. 1 on 10.02.2020 for calling objection of Jdr. on draft sale deed. However, Jdr. have not filed their objection on draft sale deed till today. They have only filed the adjournment

application on one or other pretext. I would like to mention here that, order of execution of sale deed is yet not passed in the matter. Directions are given to the DH. to file relevant documents on record. Draft sale deed will be final after the perusal of relevant documents. So far as, difference in the four boundaries of suit properties is concerned, it can be verified by the court after perusal of documents.

5. Section 47 of Civil Procedure Code says that, all questions arising between the parties to the suit in which the decree was passed, or their representative, and relating to the execution, discharge or satisfaction of the decree, shall be determine by the Court executing the decree and not by separate suit. It would be worthwhile to mention here that, this section as provided way and procedure for adjudication of objection. In the present case, Jdr. No. 7 has filed present application only on the basis of difference in four boundaries. I have already mention in above paragraph that four boundaries can be verified by the Court. It seems that point or objection rays by Jdr. No. 7 requires no adjudication. Furthermore, execution proceeding is not liable to be dismissed only on the ground mention in the application. Hence, considering the above discussion I found that this application is devoid of merit. Hence, following order is passed.

**ORDER**

Application is dismissed.

Date : 29.01.2022  
Kalmeshwar.

( H. N. Pole )  
Jt. Civil Judge Junior Division,  
Kalmeshwar, Dist. Nagpur.

**ENDORSEMENT**

Application Argued on	:	29.01.2022
Order dictated on	:	29.01.2022
Transcription Ready on	:	29.01.2022
Order checked and signed off	:	29.01.2022

**CERTIFICATE**

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

Name of the Stenographer           :-       R. S. Daware (Gr. III)