

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9014 OF 2017

Javeid Abdul Maniyar and Ors. ...Petitioners
vs.
Shaikh Ajij Dadamiya Shaikh ...Respondent

Mr. Sumit B. Kothari – Adv. for the Petitioners
Mr. Vivek V. Salunke – Adv. for the Respondent.

CORAM : S. M. MODAK, J.

DATE : 09th DECEMBER, 2021

PER COURT:-

. The Executive Court has rejected the application dated 23/08/2012 filed by the present Petitioner/decreed holder in Regular Civil Dharkhast No. 94 of 2011.

2. The Petitioners have sought for help of the police to execute the decree. In para no. 4 of that application, he has mentioned what sort of work he intend to carry out. While rejecting the application, the Executive Court has mainly given two reasons, one is the decreed holder has not filed the map and second is that in a subsequent suit being Regular Civil Suit No. 5 of 2002 filed by the present Respondent there is decree directing the present Petitioner to hand

over vacant possession of encroached portion. It is submitted that the said decree is passed in Regular Civil Appeal No. 78 of 2008 and the initially the original Regular Civil Suit No. 5 of 2002 was dismissed. It is also submitted that the present Petitioner is judgment debtor in that suit and he has preferred Second Appeal No. 743 of 2015.

3. The learned counsel invited my attention to order dated 14th October, 2015 by which substantial questions of law were framed. One of them is whether Regular Civil Suit No. 5 of 2002 filed by the present Respondent is barred by the principle of Res-judicata. It is for the reason that the earlier Regular Civil Suit No. 165/1986 filed by the present Respondent was dismissed. It is also submitted that the decree in Regular Civil Suit No. 5 of 2002 is stayed. The execution in which impugned order is passed is pending. Certain photographs are also filed on page nos. 103 to 104, one can see overlapping of branches of tamarind tree on structure and present Petitioner claims that structure belongs to him. It is true that the present execution and the second appeal will be decided in due course.

4. Considering the fact that the impugned order was passed in the year 2017 on the application which was filed in the year 2012, a query is made with both the learned advocates as to whether both of

them want to agitate their grievances so far as the reliefs claimed in the application is concerned.

5. In view of that matter kept tomorrow for hearing both the learned advocates on this aspect.

6. It is also submitted by the learned counsel for the Respondent that Respondent has expired. The learned advocate for Respondent undertakes to take instructions from his legal representatives and to file power.

7. Stand over to **10th December, 2021.**

(S. M. MODAK, J.)