

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 360 OF 2013

SARANGDHAR NAMDEO PATIL
VERSUS
SAMADHAN NAMDEO PATIL

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Advocate for Petitioner : Mr. D M Shinde h/f Mr. R M Giri

Advocate for Respondent : Mr. G.V.Wani

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CORAM : V.K. JADHAV, J.

Dated: October 01, 2015

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PER COURT :-

1. The petitioner/original plaintiff had instituted a Regular Civil Suit No.6/2011 for perpetual injunction. The petitioner has also filed an application under Order XXXIX Rule 1,2 of Civil Procedure Code for issuance of the temporary injunction. The learned Judge of the Trial Court has allowed the application and granted temporary injunction in favour of the petitioner/original plaintiff. Being aggrieved by the same, the respondent/defendant has preferred an appeal before the District Court, Jalgaon. Same was dismissed, against which Writ Petition No.6205/2012 was preferred. This Court, by order dated 9.8.2012, disposed of the writ petition by directing the Trial Court to decide the RCS No.6/2011, as expeditiously as possible, preferably within (08) eight months from the date of the order. Thereafter, the defendant has filed an application Exh.47 on

7.11.2012 for appointment of the Court Commissioner. The learned Judge of the trial Court, by its impugned order dated 21.12.2012 allowed the application at Exh.47 and accordingly the Senior Officer of Land Record Office, Erandol is appointed as Court Commissioner with a direction to submit his report within 45 days. The petitioner has challenged said order by filing the present writ petition.

2. The learned counsel for the petitioner submits that, in the year 2009, the respondent/defendant had filed an application before the Taluka Inspector of Land Records, Erandol, for measurement of the suit land, and accordingly, the Taluka Inspector of the Land Records, Erandol had measured the suit land. The Taluka Inspector of Land Records, Erandol has prepared a map in the year 2009 itself. However, the respondent/defendant has disputed the said map later on with the contention that the actual possession of the parties to the suit is not correctly shown in the said measurement map. Learned Counsel further submits that, the respondent/defendant had filed an appeal on 16.11.2010 before the District Superintendent of Land Records Office, Jalgaon, however, the same came to be dismissed. The learned counsel thus submits that, after the appeal came to be dismissed by the District Superintendent of Land

Records, the respondent/defendant at belated stage filed an application at Exh.47 for appointment of the court Commissioner to measure the suit land. On this backdrop, the learned counsel further submits that by filing the application at Exh.47, the Respondent/defendant intends to collect the evidence by appointing a Court Commissioner, and the same is not considered by the learned Judge of the Trial Court.

3. Heard Mr. Wani, the learned counsel for Respondent sole.

4. It appears from the impugned order that the respondent/defendant's appeal before the District Superintendent of Land Record, Jalgaon came to be dismissed long back. The Taluka Inspector of Land Records, Erandol had measured the suit land in the year 2009 on the basis of the application submitted by the respondent/defendant. It thus appears that the suit land is already measured and the measurement map of the suit land is also placed on record which shows the boundary marks and actual possession of the petitioner and respondent. Only after the appeal came to be dismissed, the application Exh.47 came to be filed by the respondent/defendant.

5. The learned Judge of the Trial Court observed that, even though appeal came to be dismissed by the District Superintendent of Land Records, the Civil Court can appoint a Court Commissioner. The measurement is carried out by the Taluka Inspector of Land Records, Erandol in the year 2009, map is prepared in terms of the said measurement, and appeal preferred against it is dismissed by the Superior Authority, there was no reason for the respondent/defendant to file an application before the Court for appointment of the Court Commissioner. The learned Judge of the Trial Court has directed to appoint a Senior Officer of the land Records, Erandol ignoring the fact that already superior authority of the Land Records office had dismissed the appeal preferred by the respondent/defendant against the measurement carried out by the Taluka Inspector of Land Records, Erandol. I am of the considered opinion that the respondent/defendant has filed an application Exh.47 with an ulterior motive to collect the evidence through such Court Commissioner. The impugned order passed by the Trial Court below Exh.47 is thus not sustainable. Hence, following order.

O R D E R

I. The Writ Petition is hereby allowed.

- II. The impugned order dated 21.12.2012 passed by the learned Civil Judge, Junior Division, Erandol, below Exh.47 in Regular Civil Suit No.6/2011 is hereby quashed and set aside.
- III. Application at Exh.47 is hereby rejected.
- IV. In the circumstances, there shall be no order as to costs.
- V. Writ Petition is disposed of in the aforesaid terms.

(V.K. JADHAV, J.)

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