

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

WRIT PETITION NO. 2608 OF 2015

Shaikh Shafiq Shaikh Hasan

...PETITIONER

versus

Rajendra Dinkarrao Kulkarni
and others

...RESPONDENTS

.....
Mr. S.J. Salunke, Advocate for Petitioner
Mr. B.S. Kudale , Advocate for respondent No. 2
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 19th MARCH, 2015

Order :-

1. A suit has been filed for injunction and preventing alleged encroachment by defendants over the suit property, bearing property No. 24/1382 having dimensions 33 X 66 feet from land Survey No. 277 situated within the Municipal limits of Majalgaon. The plaintiffs have also described the property in the plaint.

2. Defendant No. 5 - present petitioner appears to be a purchaser of the property from defendants No. 1 to 4 of an area of 6 *Gunthas*, as described in sale-deed dated 24-02-2012. According to defendant No. 5, there is no 10 feet road from the eastern side, as has been claimed by the plaintiffs. According to him, that forms part of open space of oil mill. Defendant No. 5

had moved an application Exhibit-72 for appointment of Commissioner in order to ascertain the possession over the property described by him admeasuring 6 *Gunthas*. That application came to be rejected by the trial court.

3. It appears that injunction has been sought by the plaintiffs in respect of the property specifically described, whereas defendant No. 5 contended that the property purchased by him in 2012 is different from the one purchased by plaintiffs. In situation like this, if measurement of the property as has been claimed by respective parties is carried out through an expert surveyor, it would, to a considerable extent, facilitate decision making in the suit.

4. In view of aforesaid, it would be expedient to direct measurement of the properties claimed by respective parties pursuant to sale-deed executed in favour of parties, by appointing District Inspector of Land Records. It is expected that the District Inspector of Land Records shall not give any opinion as regards the possession.

4. The order of the trial court, as such, is substituted by following order:

(i) District Inspector of Land Records, Beed to measure the lands under the sale-deeds in favour of respective parties and show encroachment, if any, as would be appearing in the properties claimed by the parties. Measurement should be carried out according to record maintained by the concerned Government/Municipal Office.

(ii) Aforesaid exercise be done at the expenses of petitioner/defendant No. 5. Petitioner shall deposit requisite fees as would be directed by the office concerned within a period of four weeks from such direction. Upon deposit of fees by the petitioner, measurement be carried out by the District Inspector of Land Records within a period of four weeks thereafter.

(iii) Both the parties waive notice as would be required and undertake to co-operate in the measurement process.

(iv) The District Inspector of Land Records would not give any opinion as regards the possession of the suit properties.

(v) After submitting of the report by the District Inspector of Land Records, hearing of the suit shall be expeditiously taken up and disposed of, as it is being submitted that the suit had already reached to the stage of hearing.

5. Writ petition, as such, stands disposed of.

Sd/-
(**SUNIL P. DESHMUKH, J.**)

MTK