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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1439 OF 2014

Ramdas Chaitram Patil & Others

PETITIONERS

VERSUS

Santosh Vishram Patil & Another

RESPONDENTS

.....

Mr. Amol S. Sawant, Advocate for the petitioners

Mr. D. M. Pingale, Advocate for respondents No.1 and 2

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 7th OCTOBER, 2015

ORDER :

1. Present petition has been moved against order dated 9th December, 2013 whereunder request of the petitioners of appointment of Taluka Inspector of Land Records as court commissioner for measurement of encroached portion has been rejected.

2. The trial court appears to have considered that earlier on similar attempt had been made and request had been declined by the court referring to that already there is measurement of the entire survey number and if it does not show encroachment, is not a reason good enough for appointment of Taluka Inspector of Land Records as a court commissioner. The trial court also

appears to have considered that earlier similar request of the petitioners had been declined by the trial court and the order was confirmed by the high court. Under the circumstances, the court considered that such an application would not be worth consideration and as such, rejected the same.

3. However, one will have to bear in mind that while this court had decided writ petition No. 3547 of 2012, it had observed in paragraph No.2 of the order dated 5th November, 2012 thus -

“2. It seems the petitioners and probably their advocate are unable to interpret the TILR's report / map properly, but I am sure that if proper evidence is given in support of the map etc., the petitioners will be able to prove their case, if it is true. While appreciating the evidence so given by the parties, if the learned judge of the trial court still finds it necessary to get the lands measured etc., he may get the lands measured once again. Such decision of the learned Judge of trial court would be independent. Even these observations are not binding on him.”

4. Learned advocate for the petitioners contends that various documents including map and Hissa form do indicate that there is indeed an encroachment over the property belonging to the petitioners, however, it is difficult from the same as to which area exactly has been encroached upon. For said purpose, appointment of Taluka Inspector of Land Records as court

commissioner is necessary.

5. Having regards to the observations of this court in writ petition No. 3547 of 2012, referred to above, if the trial court considers it necessary to get the lands measured, for purpose of exact area of encroachment it is open for the court to do so and for said purpose, it is open for the petitioner, to once again make such a request at appropriate stage.

6. Present application Exhibit55, which has been rejected under the impugned order as such, is rendered premature. Looking at aforesaid, hardly any fault can be found with rejection of the application.

7. With aforesaid observations, writ petition stands disposed of.

[SUNIL P. DESHMUKH, J.]