

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2922 OF 2015

Sadashiv Chandrgupta Savant
and another

...PETITIONERS

versus

Dhanaji Maruti Savant and ors.

...RESPONDENTS

.....
Mr. S.V. Deshmukh, Advocate for Petitioners
Mr. S.N. Patne, Advocate for respondents
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 17th APRIL, 2015

Order :-

1. The petitioners–original defendants purport to have been aggrieved by order dated 16-02-2015 on application Exhibit-35 by plaintiffs in Regular Civil Suit No. 138 of 2013, passed by learned Civil Judge, Junior Division, Tuljapur, whereunder request of the plaintiffs for appointment of Taluka Inspector of Land Records, Tuljapur, as court commissioner to measure the land, has been allowed.

2. Learned counsel for petitioners submits that various contentions have been raised by the defendants, while resisting application Exhibit-35, which have been referred to in the order. He further submits that in 2003's order, directing correction in

consolidation record has been stayed by the State Government in the appeal and the matter is *sub-judice* before the learned minister of revenue. He submits that as such, new record would hardly hold the field according to which measurement can take place. He has no objection, if measurement is directed to be carried out according to old consolidation record.

3. Mr. Patne, learned counsel for respondents-plaintiffs, however, submits that there is no reference to stay by the learned minister of revenue as has been contended before this court by petitioners. He further submits that as such, it should be deemed that position as per 7/12 extracts would be considered for measurement.

4. Perusal of the impugned order, however, suggests that no such contentions have been advanced before the learned Judge. In view of the contentions as have been canvassed before this court, I deem it appropriate that the application seeking measurement be reconsidered allowing amendments if any sought to the same and it would be open for the petitioners-defendants to resist the same and thereafter the court shall decide it on its own merits.

7. In view of aforesaid, impugned order dated 16-02-2015 passed by learned Civil Judge, Junior Division,

Tuljapur on Exhibit-35 in Regular Civil Suit No. 138 of 2013 shall have no efficacy and would not be acted upon and stands set aside.

8. With liberty as aforesaid, writ petition stands disposed of.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK