

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**APEAL FROM ORDER NO. 40 OF 2015
WITH CA/4730/2015 IN AO/40/2015**

**SONABAI W/O RAMBHAU KATHARE(DECEASED THROUGH LRS) 1
RAGHUNATH S/O RAMBHAU KATHARE
VERSUS
MAROTI S/O GOKUL PIRANE**

...
Advocate for Appellant: Mr. Usmanpurkar Aniruddha S.
Advocate for Respondents : Mr. D. K. Rajput

...
CORAM : S. V. GANGAPURWALA, J.

DATE : 24th August, 2015

PER COURT :

1. Mr. Usmanpurkar, the learned counsel for the appellant strenuously contends that the Lower Appellate Court was not justified in remanding the matter for fresh measurement of the suit lands. The learned counsel submits that the Appellate Court was required to decide the Appeal on the basis of evidence as available. The Court Commissioner could not have been appointed for collecting evidence.

2. Learned counsel further submits that the TILR was appointed as Court Commissioner. He has produced the measurement map. Evidence of the TILR has been led. Only because the said measurement map does not favour the present respondent, that itself would not be sufficient to remand the matter. According to the learned counsel, remand of the matter cannot be as a matter of course and more particularly, for collecting evidence. Learned counsel has relied on the judgment of Single Judge of

this Court, in the case of **Sanjay s/o. Namdeo Khandare Vs. Sahebrao s/o. Kachru Khandare & Ors., reported in 2001 (1) Bom.C.R. 800.**

3. The learned counsel for the respondent supports the judgment.

4. With the assistance of the learned counsel, have gone through the judgment.

5. Dispute appears to be of the identity of the property, its boundaries. In such a case, appointment of court commissioner is always advisable. The Court commissioner was appointed i.e. the T.I.L.R. He had submitted measurement map. However, the appellate court found that there is no mention of any *tipan* while measurement. As such it was not clear as to the fix boundary which the TILR has found. In cases of dispute of identity of property, its location and measurement, it is the expert, who can throw light and in such cases, assistance of expert is always desirable.

6. Reference can be made to the judgment of the Apex Court in the case of **Haryana Waqf Board Vs. Shanti Sarup and others, reported in (2008) 8 SCC 671** so also the judgment of learned single judge of this Court in case of **Ramchandra Bhikaji Jagtap Vs. Dudharam Langruji Padvekar reported in 2003 Mh.L.J. 594.**

7. No doubt it is correct to state that the Appellate Court shall be loath in interfering with the findings of the trial Court and remand of the matter has to be by way of last resort. Considering the fact that the

assistance of expert shall be necessary in the matter and that the measurement map which is on record does not appear to have been prepared by following due procedure of law, the appellate court was justified in remanding the matter. In the light of above, no case for interference is made out.

8. As such, the appeal from order is dismissed. No costs. Civil Application also stands dismissed.

(S. V. GANGAPURWALA, J.)

JPC