

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

WRIT PETITION NO. 2196 OF 2015

Ramchandra Yashwant Mohole ... Petitioner

Versus

Houshiram Ganpat Deshmane
& others ... Respondents

.....
Mr. S.S. Pawar , Advocate for petitioner
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 27th FEBRUARY , 2015

PER COURT :

1. The petitioner is aggrieved by the order dated 29-09-2014 passed below application Exhibit 127 in R.C.S. No. 527/1996.
2. The petitioner is the plaintiff in the said proceedings which are pending for the past almost 19 years. A Court Commissioner was earlier appointed and his report was placed before the Court. Objection was raised. By order dated 04-01-2007, the Trial Court has rejected the report of the Court Commissioner at Exhibit 38.
3. A Taluka Inspector of Land Records (T.I.L.R.), Sangamner was then appointed as a Court Commissioner with a direction to

measure the suit property and fix the boundary marks. He was first directed to make 'falni' of the suit property and then measure it. He was also directed to mention encroachment if any and submit a sketch map.

4. Pursuant to the order dated 04-11-2007, the T.I.L.R. has submitted a report dated 09-08-2010 setting out certain observations made by him. However, as regards the 7/12 extract and the revenue records, he has noticed a discrepancy to the extent of 95 R of land. His report runs into 55 pages.

5. The petitioner submits that an application was moved bearing Exhibit No. 106 requesting the Trial Court to issue further directions for appointment of the T.I.L.R., Sangamner as a Court Commissioner and carry out measurement of the suit property and fix the boundary marks once again. By order dated 18-07-2014, application Exhibit 106 has been rejected.

6. The petitioner has then filed an application Exhibit 127 setting out circumstances dating back to the order dated 04-01-2007 passed by the Trial Court when the report of the T.I.L.R. was set aside/ rejected. Contention in application Exhibit 127 is that till the records are not corrected as per the report of

T.I.L.R., Sangamner dated 09-08-2010, the suit filed by the petitioner in 1996, be stayed. By the impugned order dated 29-09-2014, the Trial Court has rejected the said application.

7. The petitioner has canvassed a host of grounds. All pertain to the rejection of the Court Commissioner's report by order dated 04-01-2007 and the report of the T.I.L.R. dated 09-08-2010. Issue is as to whether the petitioner could make out a case for the staying of his suit.

8. The petitioner has invoked Section 10 of the Code of Civil Procedure (CPC). Section 10 reads as under :-

"10. **Stay of Suit-** No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or any Court beyond the limits of [India] established or continued by the [the Central Government] [***] and having like jurisdiction, or before [the Supreme Court]"

9. The Trial Court arrived at a conclusion that Section 10 cannot be invoked in the light of the grounds raised by the petitioner in application Exhibit 127. The Trial Court has, therefore, held that the suit could be stayed if the matter at issue was also

directly and substantially in issue in any other previously instituted suit between the same parties or between the parties under whom they or any of them have raised a claim under the same title. The Trial Court, as recorded its conclusions in paragraph 5 of the impugned order.

10. Considering the submissions of the learned Advocate and the fact situation emerging from the petition paper book, I do not find that the impugned order of the Trial Court could be termed as being perverse or erroneous. It is apparent that the petitioner initially sought the appointment of a T.I.L.R. below Exhibit 106. On two occasions prior thereto, the Court Commissioner was appointed. Exhibit 106 was rejected and thereafter the petitioner invoked Section 10 of the CPC seeking a stay to the suit on the ground that the revenue records need to be corrected.

11. I am, therefore, unable to accept the submissions of the petitioner. The Trial Court has rightly come to a conclusion that the grounds tried to be made out below Exhibit 127 did not deserve any consideration. The petition is devoid of merit and is, therefore, dismissed.

(**RAVINDRA V. GHUGE, J.**)