

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11658 OF 2014

RAJANNA NARAYANRAO SANGAM AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Shri Aghav Avinash D,

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 07, 2015

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PER COURT :-

1. Heard.
2. The petitioners are the original plaintiffs in RCS No.186 of 2014, filed for seeking possession of the property, alleged to have been encroached upon by the defendants and for perpetual injunction. The house property of the petitioners bears CTS No.6150 admeasuring 193 sq. meters. The defendants are the owners of the house property bearing CTS No.6149 admeasuring 242 sq. meters.
3. The petitioners' contention before the trial Court is that there was a wall dividing the two properties, referred above. The defendants have removed the said wall and have encroached upon the property of the petitioners. Application Exhibit 26 was filed by the petitioners, requesting the Court to direct measurement of the two properties and identify that the wall which was earlier constructed has been removed by the defendants.

4. By order dated 9.5.2014, the trial Court has directed the appointment of Taluka Inspector of Land Records ("TILR") as the Court Commissioner to measure the common wall i.e. Southern wall of CTS No.6150, which is the Northern wall of CTS No.6149. The TILR was directed to file a report, specifically showing encroachment by the defendants, if any. The petitioners were directed to deposit the measurement fee on/on before 15.5.2014.

5. The petitioners thereafter have moved an application Exhibit 26 seeking correction in the order dated 9.5.2014 on the plea that since the wall has dis-appeared, having been removed by the defendants, both the properties need to be measured.

6. While rejecting the said application, by order dated 13.5.2014, the trial Court has observed that the TILR would measure the property of the petitioners and will also identify the wall and will submit a report, indicating whether there is any encroachment by the defendants.

7. The petitioners were still not satisfied. They, therefore, moved an application on 29.9.2014 (Exhibit 50) once again seeking a correction in the order and praying for a direction that the Deputy Director of Land Records, Jalna should be appointed in the place of the TILR to carry out the directions given by the trial Court on 9.5.2014 below Exhibit 26 and on 13.5.2014 below Exhibit 20.

8. By the impugned order dated 13.11.2014, the said application has been rejected. The trial Court has noted that the TILR is competent to look into the matter and implement the directions given and submit his report.

9. The petitioners are aggrieved by these orders. Grievance is that since there is no wall left by the defendants between the two properties, the TILR would not be able to inspect the wall and his report would be insignificant.

10. Having heard the learned Advocate and having gone through the impugned orders with his assistance, I do not find that either of these three orders could be termed as being perverse or erroneous. The petitioners have failed in making out a case of gross injustice being caused by the impugned orders.

11. The Writ Petition is devoid of merits and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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