

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

WRIT PETITION NO. 1226 OF 2015

Shaikh Mushtak Ahmed Abdul Khadar
& others ... Petitioners

Versus

Mohammad Halimoddin Baksh
& others ... Respondents

.....
Mr. P.V. Mandlik, Senior Advocate holding for
Mr. S.A.P. Quadri, Advocate for petitioners
.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th FEBRUARY , 2015

PER COURT :

1. The petitioners are some of the defendants in R.C.S. No. 256 of 2011. The adjudication of the said suit has already been expedited under orders of this Court dated 10-12-2012 in Writ Petition No. 8460 of 2012. Recording of evidence of the plaintiffs has already been concluded.

2. The petitioners/ defendant Nos. 1 to 3 had moved application Exh. 181 under order XXVI Rule 9 seeking appointment of a T.I.L.R. as a Court Commissioner for conducting

a joint measurement of the suit properties. By the impugned order dated 25-08-2014, said application has been rejected.

3. The grievance put-forth by the learned Senior Advocate is that two contradictory measurements are produced by the plaintiffs and some of the defendants. As such, they claim to rely upon a map produced by them which are based upon measurements at their behest. In the light of such contradictory maps, it would be in the interest of the litigating parties that a T.I.L.R. is appointed for measuring the suit properties once again.

4. Reliance is placed upon the judgment of this Court in the matter of ***Vachhalabai w/o Kundlik Gavane and others Vs. Chinkaji s/o Malhari Jadhav and others***, reported at [2012 (4) *Mh.L.J.*] 198. Submission is that in the face of two maps produced by the parties, this Court had directed that T.I.L.R. be appointed for the joint measurement of the lands.

5. Having heard the learned Senior Advocate and having gone through the petition paper book, it emerges from the record that the Government authorities have already prepared the village map and the same has been produced before the Trial Court. The defendants are yet to lead evidence. It is settled position of law

that the litigating parties can dispute the report based on the measurement and the map.

6. Similarly, the Village map prepared by the Government authority is also before the Trial Court along with the revenue records. The Trial Court, therefore, concluded in the impugned order that the village map prepared by the Government authority and the revenue records in support thereof would be the best evidence subject to establishing its accuracy in order to conclude the location of the property and the WAY, if any.

7. In the light of the above, I do not find any reason to disagree with the conclusion of the Trial Court and especially its observations in paragraph No. 9 as stated here-in-above.

. In the light of the above, the petition is devoid of merit and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)