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

WRIT PETITION NO.841 OF 2015

Keshavrao Bhagwanrao Gadhave. ..Petitioner

-Versus-

Bharat Shankar Gadhave and others. ..Respondents

.....
Mr.S.S.Choudhari, Advocate for the Petitioner.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd February, 2015

Per Court:

1 The Petitioner is aggrieved by the order dated 26.08.2013 passed below Exhibit-61 and the order dated 06.12.2014 passed below Exhibit-71 in RCS No.379/2001.

2 The Petitioner is the original Plaintiff in RCS No.379/2001 filed before the learned Civil Judge Senior Division, Osmanabad seeking declaration of ownership and perpetual injunction in relation to the enjoyment over the common *bandh* and trees standing between the land Gat Nos.367 and 431 at village Warude, Taluka and District Osmanabad.

3 The Trial Court had protected the Petitioner with an order of

injunction.

4 Regular Civil Appeal No.141/2010 was filed by the Petitioner after the suit was dismissed. The Deputy Superintendent of Land Records was appointed as Court Commissioner in the Appeal proceedings. Subsequently, the Appeal was allowed and the suit was restored before the Trial Court for a fresh hearing.

5 Pursuant to the order passed by the Appellate Court of appointing the Deputy Superintendent of Land Records as a Court Commissioner, the inspection was carried out and the inspection report is before the Trial Court.

6 The Petitioner moved an application Exhibit-61 dated 03.04.2013 seeking directions from the Trial Court that the Taluka Inspector of Land Records (TILR) or the Deputy Superintendent of Land Records be appointed as a Court Commissioner and he be directed to comply with the order passed below Exhibit-37 and carry out the measurement properly and produce a correct map. The said application has been rejected by the impugned order dated 26.08.2013.

7 The said order has not been challenged till the further order

impugned in this petition dated 06.12.2014 was passed by the Trial Court.

8 The Petitioner once again moved an application Exhibit-71 renewing the request which was earlier made in Application Exhibit-61. By the impugned order dated 06.12.2014, the Trial Court rejected the said application on two counts. Firstly, that the order below Exhibit-61 has resulted in rejection of an identical application and that order has not been set aside. Secondly, the TILR has already measured the property and the measurement report is already placed on record.

9 The grievance of the Petitioner is that the TILR has not properly complied with the directions given to him by the Trial Court below Exhibit-37. He should have strictly followed the directions and should have measured the said properties, should have fixed the boundaries and should have submitted his report along with the map indicating existence of trees and cart-track. According to the Petitioner, this has not been done. It is, therefore, submitted that application Exhibit-61 or application Exhibit-71 should have been allowed by the Trial Court.

10 Having considered the submissions of Mr.Choudhari, learned counsel appearing for the Petitioner, I have gone through the petition paper book with his assistance. It is not in dispute that the Appellate Court

has directed the appointment of the Court Commissioner. He has carried out the measurement and has submitted his report along with the map which is on record. The Petitioner/ Plaintiff has already examined the TILR and has attempted to prove the map produced by him. The Trial Court, therefore, concluded that the litigating parties have liberty of disputing the report as well as the map. The Petitioner has attempted to prove the map before the Trial Court.

11 In a catena of judgments, this Court has concluded that the TILR can be examined and cross-examined by the litigating parties on his report and map.

12 In my view, the Trial Court was justified in rejecting Application Exhibit-61 whereby the Petitioner prayed for further directions to the TILR to once again carry out the measurement purportedly for implementing the order passed by the Trial Court below Exhibit-37 which was in pursuance to the observations of the District Court.

13 When the law enables the litigating parties to deal with the report of the TILR and the map, the request for directing the TILR to once again measure the suit properties and prepare a report as well as a map purportedly on the ground that the order of appointment of the Court

Commissioner is not fully complied with, is misconceived and an unsustainable proposition.

14 In the light of the above, I do not find that the impugned order below Exhibit-61 dated 26.08.2013 could be termed as perverse or erroneous. Consequentially, the order dated 06.12.2014 calls for no interference.

15 The Writ Petition being devoid of merits is, therefore, dismissed. No order as to costs.

(RAVINDRA V. GHUGE, J.)