

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5851 OF 2012

Smt. Vinaya Laxman Kelkar and others

.. Petitioners

Versus

Shri. Machindra Hanumant Dhankawde and others .. Respondents

Mr. Ajay A. Joshi, for the Petitioners.

Mr. Sachindra B. Shetye i/by Manish R. Bohra, For Respondents No.1 to 16.

CORAM : R.M. SAVANT, J.

DATE : 09th FEBRUARY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 27.03.2012 passed by the 21st Joint Civil Judge, Junior Division, Pune, by which order the application Exh.44 for appointment of the TILR as a Court Commissioner to carry out demarcation of the suit property as per the boundaries mentioned in the Sale Deed dated 23.12.1965 came to be rejected.

2. The suit in question being Regular Civil Suit No.1273 of 2010 has been filed by the Petitioner/Plaintiff for removal of the alleged encroachment in the land bearing Survey No. 4/4 which is purchased by the Plaintiff vide Sale Deed dated 23.12.1965.

3. Prior to the instant application Exh.44, the Plaintiff had filed two applications i.e. Exhs. 33 and 34 for appointment of the Court Commissioner and for directing the production of the report in respect of the demarcation of the suit property carried on 15.04.2010 bearing Mo.R No.7620 of 2009 and 7682 of 2010 in respect of City Survey No.146, Dhankawdi, Pune. In so far as application Exh.33 was concerned, the Trial Court rejected the said application in view of the fact that the demarcation was already carried out by the City Survey Officer-1, Pune. The Trial Court however, allowed Exh.34 and directed the City Survey officer to produce the record relating to the said demarcation carried on 15.04.2010. In terms of the directions of the Trial Court as contained in the order dated 25.08.2011, the City Survey Officer-1, Pune by letter dated 12.10.2011 informed the Court that in view of the fact that both the Defendants and the Plaintiff were showing occupation of the same land, it was not possible to carry out demarcation and therefore, the application made for demarcating the property has been accordingly disposed of. It is thereafter that the Plaintiff filed the instant application Exh.44 for appointment of the Court Commissioner by way of TILR to demarcate the suit property i.e. Survey No.4/4 as per the boundaries mentioned in the Sale Deed dated 23.12.1965. The Trial Court has rejected the application for the reasons mentioned in the impugned order. It has been recorded in the impugned order that there is no division of CTS No.146 and there is no mention in

record that it was inclusive of Survey No.4/4 and Survey No.4/20. The Trial Court on the basis of the case of the Plaintiff posed the question as to whether Survey No.4/4 and 4/20 were part of CTS No.146 and if yes, where they were situated. The Trial Court observed that if the application for appointment of the Court Commissioner is allowed, it would amount to appointment of Court Commissioner to collect evidence as to who is in possession over the CTS No.146 that too when there is no division of boundaries of Survey No.4/4 and 4/20.

4. It is required to be noted that the Gat Book Map has been placed on record by the Plaintiff. The same is at page No.30 of the Writ Paper Book. The Learned Counsel appearing for the Respondents Mr. S. B. Shetye states that the Respondents i.e. the original Defendants have no objection if the demarcation is carried out in terms of the Gat Book Map and not as per the boundaries shown in the Sale Deed. Upon this, the Learned Counsel appearing for the Petitioners Mr. Ajay A. Joshi on instructions of the brother-in-law of the Petitioner who is personally present in the Court states that though the application Exh.44 was filed for demarcation in terms of the Sale Deed dated 23.12.1965, the Petitioner has no objection if the demarcation is carried out as per the Gat Book Map. In the light of the said statement, the impugned order dated 27.03.2012 is set aside and the following directions are issued-

I) The Taluka Inspector of Land Records (TILR), in the office of the Collector, Pune is directed to carry out demarcation. In so far as Survey No.4/4 is concerned, in terms of Gat Book Map extract of which is at Exh.30 of the Writ Paper Book and submit his report to the Trial Court.

II) In so far as the map that would be submitted by the Taluka Inspector of Land Records (TILR) is concerned, it would be open for the Plaintiff to lead evidence in respect of the said map after it is submitted and for the Defendants to cross-examine any witness that the Plaintiff would examine in that respect.

III) The demarcation to be carried out by the Taluka Inspector of Land Records (TILR) within 8 weeks from date.

IV) The parties to appear before the Taluka Inspector of Land Records (TILR) with a copy of the instant order on 23rd February, 2015 at 11.00 a.m. The Taluka Inspector of Land Records (TILR) would therefore fix his schedule as per his convenience.

V) The Parties to act upon a copy of the order duly authenticated by the Court Shirestedar. The Petition is

allowed to the aforesaid extent and to accordingly stand
disposed of.

[R.M. SAVANT, J]