

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 601 OF 2016

Pralhad s/o. Narayan Andure,
Age 58 years, Occu. Service,
R/o. Maka, Tq. Newasa,
District Ahmednagar

.....Petitioner/Ori. Defendants.

Vs.

Babasaheb s/o. Balbhim Mache,
Age 56 years, Occu. Medical Practitioner,
R/o. Maka, Tq. Newasa,
District Ahmednagar

.....Respondent/Ori. Plaintiff.

...
Mr. N.K. Choudhari, Advocate for petitioner.
Mr. A.P. Basarkar, AGP for for State.
Mr. K.D. Mote, Advocate for respondent sole.

...

CORAM : T.V. NALAWADE, J.
DATED : 20th August, 2016.

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2) The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Newasa on Exh. 57 in R.C.S. No. 951/2011. The application was filed for making another measurement through T.I.L.R. of the disputed property. The first report of T.I.L.R. as Court Commissioner is already received and defendant has dispute about that measurement on

many counts. This Court has considered that report.

3) The main thing about the present matter is nature of order made by the Trial Court by which Court Commissioner was appointed. The order dated 3.8.2012 made on Exh. 21 runs as under :-

“Therefore, T.I.L.R. Newasa is appointed as the Court Commissioner to visit the land Gut No. 411 of village Maka, Tal. Newasa giving in writing a notice to both the parties or their Advocate regarding the day and time of his visit for commission work to the suit property and asking them to remain present at the time of commission work at the suit property. The Court Commissioner is hereby directed to measure the plaintiffs construction and vacant land under his occupation as per the record of city survey office. Commissioner is further directed to measure defendants construction and vacant land under his occupation. Commissioner is further directed to point out the construction of plaintiff and defendant as well as measurement of vacant land of plaintiff and defendant in feet or sqft. Both the parties are directed to appear before the Commissioner accordingly.”

4) The aforesaid order made by the Trial Court shows that the order itself created confusion and in one way the Court directed the Cadestral Surveyor to collect evidence with regard to the so called possession of respective parties.

5. The submissions made show that the Gat No. 411

was initially owned by one person, but he sold the two portions to two different persons and from these two different persons, the present parties have purchased the respective portions. In view of these circumstances, the measurement needs to be made on the basis of original Tippan of Gat No. 411 and the two sale deeds executed by the original owner. The boundaries and the area mentioned in the first sale deed will prevail over the contents of the second sale deed. So, both the parties are to produce first the two sale deeds executed by original owner and on the basis of other revenue record already observed measurement can be made. That will solve the dispute once for all.

6. In the result, the petition is allowed. The application at Exh. 57 in R.C.S. No. 951/2011 filed in the Trial Court by the present petitioner is allowed. The Cadestral Surveyor is to be appointed to make the measurement on the basis of aforesaid observations made by this Court. Charges of the measurement are to be paid by the petitioner.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/