

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.5076 OF 2015

Akil S/o Ajiz Sayyed Vs. Sarwar Yusuf Shaikh

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.V.S.Badakh, advocate for the Petitioner.
Mr.Shaikh Mazhar A.Jahagirdar, advocate for Respondent.

CORAM : S.V.GANGAPURWALA, J.
Date : 21.03.2016.

PER COURT :

1. Heard.
2. Mr.Badakh, learned counsel for the petitioner submits that application for appointment of Court Commissioner filed by the present Respondent/original plaintiff is allowed without hearing the petitioner and the same is beyond the scope of Writ Petition.
3. According to Mr.Jahagirdar, learned counsel for the Respondent, ample opportunity was given to the petitioner. Even the order of otherside to say was filed. The petitioner did not file any say and thereafter, the Court on hearing the plaintiff passed the order. The petitioner failed to avail opportunity given to him.

Even otherwise, the appointment of Court Commissioner i.e. an expert is necessary, considering the dispute in the present matter.

4. I have considered the submissions. The suit basically is filed for fixation of boundaries of the plaintiff and defendant as it appears from the prayers made in the plaint. To arrive at the conclusion about the exact boundaries, encroachment if any, the measurement of the property of the plaintiff and defendant would be necessary. The impugned order directs measurements of only plaintiff's property i.e. the suit property nor the application was filed for measurement of the property of plaintiff and defendant.

5. Considering the above, I pass the following order :

a) The impugned order is quashed and set aside. The parties may file application for measurement of the property of the plaintiff as well as defendant. If such an application is filed the Court may consider to allow the said application.

b) The Writ Petition is disposed of. No costs.

(S . V . GANGAPURWALA, J .)

Dt.21.03.2016.
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