

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8221 OF 2014

RADHAKISAN RAMCHANDRA SHINDE
VERSUS
ROHINI MADHAVRAO DESHMUKH AND OTHERS

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Advocate for Petitioners : Mr. Abasaheb D. Shinde
AGP for respondent No.11: Mr. B.A. Shinde
Advocate for Respondents 1 to 4 : Mr. R.A. Tambe

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CORAM : V. K. JADHAV, J.
DATED : 17th FEBRUARY, 2016

PER COURT:-

1. By consent, heard finally at admission stage.
2. By way of present writ petition, the petitioner is challenging the order dated 18.07.2014, passed by learned 4th Civil Judge, Junior Division, Kopergaon below Exh.46 in Regular Civil Suit No. 308 of 2011, thereby rejecting the application of the petitioner for re-measurement of land.
3. Learned counsel for the petitioner submits that the petitioner-plaintiff has moved an application for appointment of Cadastral Surveyor as a Court Commissioner for re-measurement of suit property. Learned counsel submits that the Cadastral Surveyor has measured the suit property without considering the area of water

channel. Learned counsel submits that even by communication dated 30.12.2013, the Deputy Superintendent of Land Record, Kopargaon has brought to the notice of the trial court that since the pothissa measurement was not done in the matter, there was some technical difficulty to fix the boundaries as per the area shown in the 7x12 extract. Learned counsel submits that considering the contents of said communication, the trial court ought to have allowed application Exh.46.

4. Learned counsel appearing for respondent Nos. 1 to 4 submits that as per the boundaries of suit property, shown by the parties, the Cadastral Surveyor has carried out measurement. Learned counsel submits that at the time of carrying out measurement, petitioner-plaintiff had not raised any objection. Learned counsel submits that since measurement report now submitted by the Cadastral Surveyor is adverse, the petitioner-plaintiff has filed an application Exh.46 for re-measurement of suit land. Learned counsel submits that the trial court has rightly rejected the said application and no interference is called for.

5. I have also heard learned A.G.P. for respondent No.11. None present for respondent Nos. 7 to 10.

6. As per the order passed by this Court in writ petition No. 2931 of 2013 on 18.7.2013, the application for appointment of Court Commissioner, earlier filed by the petitioner-plaintiff came to be allowed and accordingly T.I.L.R. has carried out the measurement and submitted report before the court below. It appears from the communication dated 30.12.2013 issued by the Deputy Superintendent of Land Records, Kopargaon that the measurement as directed was carried out and map is prepared on the basis of said measurement, as per the boundaries shown by the parties. It is specifically mentioned in the said communication that as per the *Wahiwat* the parties have shown the boundaries and accordingly measurement was carried out and map was prepared. The Deputy Superintendent of Land Records, further stated in the said communication that, for fixing boundaries, there is some technical difficulty, as the pothissa is prepared at the level of Revenue department and those pothissa maps are not available in the office of Land Records. In the light of said communication, the trial Court in the impugned order has observed that unless and until the Cadastral Surveyor has been examined, it cannot be presumed or assumed that the measurement carried out by him is wrong. In other way, the trial court indirectly has granted liberty to the petitioner-plaintiff to file an application, if occasion so arises, after examination of Cadastral Surveyor.

7. In view of this, the writ petition is disposed of by granting liberty to the petitioner to move an application before the trial court after examination of Cadastral Surveyor. The trial court is directed to decide the said application, if filed, on its own merits considering the evidence of the Cadastral Surveyor in this regard. With the above observations, writ petition is disposed of. No costs.

(V. K. JADHAV, J.)

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