

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

WRIT PETITION NO. 9017 OF 2015

Laxman s/o Madhavrao Pawar,
Age 40 years, occup. Social Service,
R/o Kolher Road, Georai,
Tq. Georai, Dist. Beed .. Petitioner

versus

01. Rohit s/o Rajabhau Pandit,
Age 34 years, occup. Agril.,
R/o Main road, Georai, Tq.
Georai, Dist. Beed
02. The Chief Officer,
Municipal Council, Georai,
Tq. Georai, Dist. Beed .. Respondents

Mr. R. K. Temkar, Advocate i/b Mr. Vilas P. Savant, Advocate for
petitioner
Mr. V. D. Salunke, Advocate i/by Mr. V. V. Patil, Advocate for
respondent no.1
Respondent no. 2 is served.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 20TH APRIL, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, parties are heard finally.
2. I have heard learned counsel for the parties at length.
3. Petition has been moved by original plaintiff against order dated 08-07-2015 passed upon his application Exhibit-37 in regular civil suit no. 404 of 2015, whereunder his request pursuant to Order XXVI, rule

9 of the Code of Civil Procedure, 1908 for appointment of commissioner for measurement of defendants' land has been rejected by Joint Civil Judge, Junior Division, Georai.

4. The suit has been instituted seeking reliefs, *inter alia*, for injunction in respect of land shown in the sketch map annexed to the plaint ad-measuring 70' x 60', including injunction against carrying on construction and for mandatory injunction. While the suit was being proceeded with, an application for interim relief was filed which was rejected and in appeal therefrom an order came to be passed directing disposal of suit within stipulated period.

5. On 23-06-2015, application Exhibit-37 had been moved before trial court raising various contentions. In short, the submission of learned counsel for the petitioner is that on southern side of property sold, there is a road which initially in 1961 was 15 meter wide. Subsequently it has been made a State high way and road size has been increased and widened and some portion of plaintiff's land has been eaten away in the process. Subsequently, said road has been made national highway and some more portion of land is acquired for the purpose of road widening. According to learned counsel, land of defendants will have to be measured in keeping with road size at the time of purchase of land and not the present position of road.

6. The trial court while passing the order had taken stock of the situation and also took into account various aspects of the matter as are contained in paragraphs 8 to 12 of the order.

7. Having regard to aforesaid, it would be for the plaintiff to place on record the documents and give evidence in respect of his contentions. For said purpose, appointment of court commissioner at this stage does not prima facie appear to be necessary. If upon evidence the plaintiff is able to place on record that the circumstances require local investigation by appointment of court commissioner for measurement, then plaintiff may request the court to be decided on merits.

8. In view of the same, it does not appear to be a stage in the case wherein discretion is required to be exercised in favour of the petitioner.

9. Writ petition as such is not being entertained and is rejected. Rule stands discharged.

SUNIL P. DESHMUKH,
JUDGE

pnd