

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

Writ Petition No.8503 of 2016

- * Mandabai Revannath Gade,
Age Major,
Occupation: Household,
Through power of attorney
Revannath Lahanu Gade
Age Major,
Occupation: Agriculture,
R/o Yeole Aakhada, Rahuri Bk,
Taluka Rahuri,
District Ahmednagar. .. **Petitioner.**

Versus

- 1) Alka Namdeo Kadu
Died through legal
representatives
- 1A Namdeo Ramchandra Kadu,
Age 59 years,
Occupation: Agriculture,
- 1B Sharad Namdeo Kadu
Age 30 years,
Occupation: Agriculture
- 1C Satish Namdeo Kadu
Age 25 years,
Occupation: Agriculture.
- All R/o Yeole Aakhada,
Rahuri Bk, Taluka Rahuri,
District Ahmednagar.
- 1D Deepali Shantaram Chavhan,
Age 33 years,
Occupation: Household,
R/o Jategaon, Taluka Nandgaon,
District Nasik.

2. Rahuri Municipal Council,
Rahuri, Through Chief Officer,
Rahuri Municipal Council
Rahuri, Taluka Rahuri,
District Ahmednagar.

.. Respondents.

Shri. Vivek V. Tarde, Advocate, for petitioner.

Shri. Abhay Rathod, Advocate appointed, for respondent No.1.

Shri. R.V. Naiknaware, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 27 SEPTEMBER 2016

JUDGMENT:

1) Rule, Rule made returnable forthwith for final disposal by consent.

2) The petition is filed to challenge the order made on Exhibit 109 in Regular Civil Appeal No.445/2011 by the learned Ad-hoc District judge-1 Ahmednagar.

3) The appeal is filed by the present petitioner against the judgment and decree of Regular Civil Suit No.179/2009. The suit was filed by the present respondent

for relief of declaration that the decree of Regular Civil Suit No.89/2007 was obtained by fraud, she was not party to the suit when she is the owner of the suit property and relief was claimed of setting aside the said decree. The property involved in Regular Civil Suit No.89/2007 was part of Survey No.346/1 and the respondents, plaintiffs of Regular Civil Suit No.179/2009 are claiming that they are owners of entire survey No.346/1. Present petitioner is claiming to be owner of House Nos.1940 and 1941. Submissions made show that present petitioner is not disputing that these two houses are situated on Survey No.346/1. In the application filed for appointment of Court Commissioner present petitioner contended that these two houses are destroyed by the plaintiff of Regular Civil Suit No.179/2009 after getting the decree.

4) The application for appointment of Court Commissioner was made by the present petitioner for taking measurement of entire 92 R portion of Survey No.346/1 and even for recording of statements of adjacent owners. In the order the learned Judge of the District Court directed the Taluka Inspector of Land Records to

take measurement and obtain situation of 92 R area of Survey No.346/1 relating to House Nos. 1940 and 1941.

5) When it is not disputed that two houses were situated in Survey No.346/1 it is immaterial as to in what portion of Survey No.346/1 these two houses were constructed in the past. If assessment record is in favour of the petitioner and that is very old record, that record can be considered by the Appellate Court. In view of nature of relief which is granted by the trial Court and the aforesaid circumstances the appointment of Court Commissioner was not at all necessary. Such order cannot sustain in law. It can be said that only to protract the things such application was made.

6) In the result, the petition is allowed. The order made by the learned Judge of the District Court is hereby quashed and set aside. The application at Exhibit 109 stands rejected. The fees of the learned counsel appointed for respondent No.1 is quantified at Rs.3000/-. Rule is made absolute in above terms.

Sd/-
(T.V. NALAWADE, J.)

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