

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

958 WRIT PETITION NO. 10613 OF 2015

DEORAM SAYAJI SHINDE

VERSUS

CHANDU KACHRU KOPARE

...

Advocate for Petitioner : Mr. V.D. Sapkal

Advocate for Respondent sole :Mr. P. B. Shirsath

CORAM : V. K. JADHAV, J.

DATE : 10th February, 2016

PER COURT :

1. Heard finally with consent of the parties at admission stage.

2. The petitioner original plaintiff instituted the suit bearing Regular Civil Suit No. 66/2005 for decree of perpetual injunction. The petitioner/plaintiff has come with the pleadings that he has purchased 1 Are land from respondent/ original defendant on 01.07.1997. The respondent original defendant has disputed the boundary marks of the suit property as mentioned in the plaint. The petitioner plaintiff has therefore constrained to file application Exhibit- 14 for appointment of Court Commissioner. The learned Judge of the trial court, by order dated 14.06.2006, directed the T.I.L.R, Kopargaon

for measurement of the suit property, determine encroachment, if any, and fix boundaries. It was also directed to measure the suit property as disclosed in para 1 of the plaint.

3. The learned trial court, as it appears from the record, had given directions to the TILR to carry out measurement etc. However, the Deputy Superintendent of Land Record, by letter/communication dated 12.12.2014, informed the trial court that since there is no Falni measurement in respect of the suit property, the boundaries and the encroached portion cannot be shown. The learned trial court, therefore, by impugned order dated 27.04.2015, has rejected the application Exh. 60 filed by the petitioner plaintiff for giving directions again to the TILR. The learned Judge of the trial Court, however, has granted liberty to the petitioner plaintiff to approach the superior authorities of the TILR while rejecting the application. Hence this writ petition.

4. The learned counsel for the petitioner submits that even though repeated directions are given by the trial court to measure the land and submit report showing boundary marks and encroached portion, the TILR is

deliberately avoiding to submit report.

5. The learned counsel for the respondent/original defendant submits that the Deputy Superintendent of Land Record, by its communication dated 12.12.2014, has pointed out to the trial Court that unless certain compliances are made as detailed in the said communication, the measurement as directed by the Court and also the further directions given by the court cannot be complied with. Learned counsel submits that the trial court has rightly rejected the application Exh.60.

6. It appears from the communication dated 12.12.2014 submitted by the Deputy Superintendent of Land Record that unless Falni measurement is carried out in respect of the disputed property, encroached portion cannot be shown and even boundaries cannot be fixed. In view of this, the trial court has rightly rejected the application Exh.60. The petitioner, in view of the directions given by the trial court while rejecting application Exh.60, may approach to the superior authorities of the TILR. The petitioner is at liberty to file application for appointment of court commissioner after obtaining certain orders from the superior

authorities of TILR. Hence following order:

ORDER

- i. Writ petition is dismissed.
- ii. The petitioner, however, is at liberty to file application afresh for appointment of Court Commissioner after getting orders from the superior authorities of T.I.L.R. with regard to Falni measurement of the disputed land and the said application may be decided on its own merits.
- iii. In the circumstances no order as to costs.

(V. K. JADHAV, J.)

JPC