

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

WRIT PETITION NO. 11206 OF 2014

Syed Mutqiuddin Syed Taqiuddin

..PETITIONER

VERSUS

Shaikh Afsar and Others

..RESPONDENTS

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Mr. P.N. Sonpethkar, Advocate for petitioner.

Mr. P.F. Patni, Advocate for Respondent No.1.

Mr. R.K. Ashtekar, Advocate for Respondent Nos.2 and 3.

Mr. A.D. Kasliwal, Advocate for Respondent Nos.4 and 5.

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CORAM : T.V. NALAWADE, J.

DATED : 13th OCTOBER, 2016

ORDER :

1. Petition is filed to challenge the order made on Exhibit 86 in Special Civil Suit No. 217 of 2013 pending before the Civil Judge, Senior Division, Aurangabad. Heard both sides.

2. The suit is filed by the present respondent for two reliefs i.e. i) declaration that plaintiff is the owner and in possession of Gut No. 95 to the extent of 81 R and ii) the Court Commissioner should demarcate the property of the plaintiff.

3. The learned Counsel for petitioner submitted that prior to date of the suit such measurement was taken through T.I.L.R. and there was no reason to go for appointment of the Court Commissioner. This submission is not at all acceptable. When work of measurement is done in the presence of both sides and through Court Commissioner, there is some binding effect to such measurement. If there is some previous measurement and it was done in absence of party like present petitioner, that will not be binding on present petitioner. Further, when there is specific relief claimed of aforesaid nature, demarcation of boundaries, it is normal and it was obvious for the Court to make appointment of Court Commissioner.

4. The learned Counsel for the petitioner submitted that there are two parts in the operative order at Exhibit 86 like paragraph nos. 5 and 10 which read as under:

“5) On depositing urgent charges and the necessary documents, the Superintendent of Land Record to measure field gut no. 95 to demarcate the field gut no. 95 and more particularly the area admeasuring 81 R as is described in the sale deed dated 16.04.2013.

10) The Superintendent of Land Record to ascertain if such property is in existence and demarcate 81 R land as per sale deed dated 26.4.2013 in gut no. 95 to show the same in

the map and if he find physical possession of any of the defendants or others on the said land then he should mention the same in the map and his report.”

5. If the nature of relief claimed by the plaintiff is considered, it can be said that if the order made in Clause 5 is executed, it automatically executes the order made in Clause 10. If boundaries are demarcated, from demarcation it can be ascertained as to whether the adjacent owner like the owner of Gut No. 94 has made encroachment over Gut No. 95. Thus the objection in respect of Clause 10 of the operative order is misconceived.

6. The learned Counsel for petitioner placed reliance on the case **2008 (8) SCC 671 (Haryana Waqf Board Vs. Shanti Sarup and Others)** and submitted that such suit is tenable. There cannot be any dispute over this submission. Such suit is definitely tenable. This Court holds that it is not possible to interfere in the order made by the Trial Court. In the result, petition stands dismissed. The amount if any deposited by present petitioner at the time of filing of petition, is to be refunded.

(T.V. NALAWADE, J.)

SSD