

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11659 OF 2014

Sk. Suleman S/o Sk. Ramjan Khan .. Petitioner

Versus

Sk. Akbar Sk. Ratan Patel and another .. Respondents

Shri Rahul O. Awasarmol, Advocate for the Petitioner.
Shri V. P. Latange, Advocate for Respondents.

CORAM : S. V. GANGAPURWALA, J.
DATE : 21ST MARCH, 2016.

PER COURT :-

1. Mr. Awasarmol, the learned counsel for the petitioner submits that, the measurement map **Exh. 21** before the Trial Court was pursuant to measurement at the behest of the plaintiff prior to the filing of the suit. The petitioner could not participate in the trial at the time of evidence and could not cross examine the plaintiff. According to the learned counsel, for proper adjudication of the suit the measurement of both C.T.S. Nos. 15791 and 15792 by the expert i.e. person from City Survey Office is necessary. The plaintiff has not mentioned the four boundaries of the suit property which is necessary for identification of the suit property. The defendant is not admitting the map **Exh. 21**. Only on the ground that the matter is more than five years old and as per the direction of this Court the same is to be disposed of, the Appellate Court has passed the order.
2. Mr. Latange, the learned counsel for the respondents supports the order.
3. The suit is for perpetual and mandatory injunction. The

plaintiff has relied on the measurement map **Exh. 21**. The Appellate Court has observed that the defendant though filed the written statement did not participate at the time of evidence and did not cross examine the plaintiff. The petitioner can agitate all the grounds at the time of final hearing of the appeal, for the said reason the Court naturally could not have entertain the application for measurement at the fag end of the hearing of appeal.

4. The Appellate Court has observed as under -

“The evidence of plaintiff remained uncontroverted and unrebutted. The learned trial Judge placed reliance on that evidence and decreed the suit. Feeling aggrieved by that decision, in 2009 this appeal was preferred. Thereafter appellant and his advocate failed to remain present before this Court for hearing of this appeal, hence on 21-2-2011 this appeal was dismissed for default. Thereafter, restoration petition MARJI No. 123 of 2011 was filed. That application was allowed on 16-2-2012 and appeal was restored subject to payment of costs of Rs. 300/- Thereafter, this appeal was fixed for hearing on 11-9-2014. But argument not advanced on 7-10-2014, 8-10-2014, 13-10-2014. As this matter is more than 5 years old this Court , as per direction of Hon’ble High Court this Court started insisting for final hearing. Thereafter, on 14-10-2014 this application for appointment of Court Commissioner was came to be filed. In this application for the first time

it is alleged that, while doing measurement of CTS No. 15792 notice was not issued to the defendant and the defendant is not admitting the map prepared on the basis of said measurement. It is material to note that in the grounds of appeal that objection was not raised. Thus that objection was raised falsely and after thoughtfully after lapse of more than five years from filing the appeal.”

5. Considering the above, no relief can be given to the petitioner. The writ petition is accordingly disposed of. No costs.

[S. V. GANGAPURWALA, J.]

sam/Mar.16