

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

WRIT PETITION NO.1527 OF 2016

Smt. Hausabai Tukaram Auti,
Age 73 years, Occu. Household,
R/o Velu, Taluka Shrigonda,
District Ahmednagar

..Petitioner

Versus

1. Sau. Sulochana Madhav Pimple
Age 60 years, Occu. Household
and Agriculture
2. Shri Dattatraya Madhav Pimple,
Age 39 years, Occu. Agriculture
3. Shri Pandurang Shripati Gore,
Age 71 years, Occu. Agriculture
4. Sau. Kusumbai Pandurang Gore
Age 66 years, Occu. Household
5. Nagnath Rajaram Pimple,
Age 49 years, Occu. Agriculture

All R/o Village Velu, Taluka
Shrigonda, Dist. Ahmednagar

..Respondents

Mr S.S. Kulkarni, Advocate h/f Mr D.B. Rode, Advocate for petitioner
Mr V.P. Latange, Advocate for respondents No.1 and 2
Mr V.B. Kale, Advocate for respondents 3 to 5

**CORAM : T.V. NALAWADE, J.
DATE : 24th August 2016**

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with the
consent of parties.

1. The petition is filed to challenge the order dated 1st December
2015 passed by Civil Judge, Senior Division, Shrigonda on Exh.69 in
Regular Civil Suit No.57 of 2007.

2. Suit is filed by the present petitioner for relief of removal of encroachment. Application was made to appoint Cadastral Surveyor as Court Commissioner to take the measurement, but this application is rejected. Heard both the sides.

3. It appears that initially, such order was made and Court Commissioner had measured the land. However, when the evidence was to be given, the Court Commissioner filed report to the effect that the record of measurement was lost and only the map was available. In view of this circumstance, the Cadastral Survey was not examined as witness of plaintiff.

4. Though there are aforesaid circumstances, the learned Judge of the trial Court has observed that appointment of one more Court Commissioner will cause hardship to the defendants. It is the case of the plaintiff that portion around 57 Aar is encroached by the defendants. In the copy of plaint produced in this proceeding it is mentioned that the portion is described as 0.57 - Aar whereas it should have described been as 57 -Aar. Learned Counsel for the petitioner makes statement that he will make necessary amendment in the pleadings.

5. Nothing could have been achieved by the plaintiff by not taking urgent steps for appointment of Court Commissioner in view of aforesaid circumstance. There was no fault on the part of plaintiff and it was fault of office of the Superintendent of Land Records.

6. In view of these circumstances, this Court holds that the trial Court ought to have allowed the application.

7. As such, Writ Petition is allowed. The order dated 1st December 2015 passed by Civil Judge, Senior Division, Shrigonda on Exh.69 in Regular Civil Suit No.57 of 2007 is set aside. The application, Exh.69 is allowed. The costs of the Court Commissioner is to be borne by the petitioner.

8. The Office of Superintendent, Land Records to submit its report within three months from today.

9. The suit to be disposed of within six months thereafter.

10.. Rule made absolute in above terms.

(T.V. NALAWADE, J.)

vvr