

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9435 OF 2015

HANUMANT DYANOBA BABAR

...Petitioner

Versus

GAJENDRA VITTAL GARAD

AND ORS

...Respondents

....

Mr. Samir Kumbhakoni, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 14th MARCH, 2016

P.C.

1. Heard Mr. Samir Kumbhakoni, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.1' has challenged the judgment and order dated 7.3.2015 passed by learned 12th Jt. Civil Judge, Junior Division, Solapur below Exhibit-6 in Regular Civil Suit No.96/2014. By that order, learned trial Judge allowed the application Exhibit-6 made by respondent Nos.1 and 2, hereinafter referred to as the 'plaintiffs', under Order 26 Rule 9 of Code of Civil Procedure, 1908 (for

short, 'CPC') and appointed Taluka Inspector of Land Records (for short, 'T.I.L.R.'). South Solapur, Solapur as a Court Commissioner to measure block No.142, Mouje Vadapur, Taluka South Solapur, Solapur and to fix the boundaries of respective lands of the plaintiffs and the defendants.

3. The plaintiffs have instituted the Suit for perpetual injunction against defendant No.1 and defendant Nos.2 to 7 restraining them from committing encroachment from the western side of Gat No.142/3/2 admeasuring 1 Hectare and Gat No.142/3/1 also admeasuring 1 Hectare, as more particularly described in paras-1, 1A and 1B of the plaint. The plaintiffs alleged that the defendants are the owners of lock No.142/1 and 142/2 and that they are trying to encroach upon the suit property prescribed in paras-1A and 1B. The plaintiffs, therefore, filed application Exhibit-6 for carrying out measurement of the entire Gat No.142 and fixing the boundaries of the respective owners through the Deputy Superintendent of Land Records.

4. Defendant No.1 filed reply contending that gat Nos.140, 141, 142 and 143 were formed from original survey No.49. It is,

therefore, necessary to carry out measurement of survey No.49 and thereafter fix the boundaries.

5. By the impugned order, the learned trial Judge has appointed T.I.L.R. to carry out the measurement of Block No.142 and to fix the boundaries of the respective lands of the plaintiffs and the defendants.

6. Mr. Kumbhakoni reiterated the submissions that were made before the trial Court. He submitted that Gat Nos.140, 141, 142 and 143 were formed out of survey No.49. Defendant No.1 has no objection for carrying out measurement of entire Survey No.49 as well as fixing the boundaries of Survey No.49 so as to resolve the disputes between the parties.

7. It is not possible to accept this submission. As noted earlier, the plaintiffs have claimed ownership over Gat No.142/3/2 admeasuring 1 Hectare and Gat No.142/2/1 admeasuring 1 Hectare. The plaintiffs do not dispute that Gat No.142/1 and Gat No.142/2 are owned and possessed by the defendants. The dispute between the parties is only in respect of Gat No.142. The plaintiffs have not raised any dispute against the owners of gat No.140, 141 and 143. They are also not made

party in the suit. In view thereof and for the reasons stated in para-5 of the impugned order, I do not find that learned trial Judge has committed any error in passing the impugned order. Hence, the petition fails and the same is dismissed.

8. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contended by section 105(1) of Civil Procedure Code.

(R. G. KETKAR, J.)

Deshmane (PS)