

Mr. Sandesh D. Patil for Petitioners.
Mr. Saurabh S. Oka for Respondent No.2.

P.C. :

Heard Mr. Patil, learned Counsel for petitioners and Mr. Oka, learned Counsel for respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as defendants No.3, 5, 6 and 7 have challenged the judgment and order dated 19.03.2013 passed by the learned Joint Civil Judge, Junior Division, Kagal below exhibit-122 in Regular Civil Suit No.37 of 2006. By that order, the learned trial Judge rejected the application made by defendants No.6 and 7 for exhibiting documents at serial No.2 of the list of document at exhibit-121 on the ground that it not a public document. The controversy in the present Petition is only in respect of document at serial No.2 of the list of document at exhibit-121 i.e. measurement map.

3. Mr. Patil strenuously contended that the map at exhibit-121/2 is a public document as per Section 74 of the Indian Evidence Act, 1872 (for short 'Act'). He also submitted that as per Section 74(1)(ii) of the Act, the said measurement map being document forming the acts of Deputy Superintendent of Land Records, Kagal, who is a public Officer as contemplated by Section 2(17) of the Code of Civil Procedure, 1908 (for

short 'C.P.C.') is a public document. He also relied upon Section 8 of the Maharashtra Land Revenue Code, 1966.

4. Mr. Patil submitted that respondent No.2, hereinafter referred to as plaintiff, has instituted Suit for perpetual injunction against the defendants inter alia claiming relief of injunction restraining defendants from dispossessing the plaintiff as also causing obstruction to his peaceful possession over Gat No.2130 admeasuring 3 Hectares 96 Ares (old Survey No.262, Hissa No.1 admeasuring 3 Hectares 96 Ares) situate at Mauje Shendur, Taluka Kagal, District Kolhapur. Defendants resisted the claim by filing written statement as also set up counter-claim for mandatory injunction against the plaintiff for removing the illegal encroachment made by plaintiff in their property. He submitted that as per Section 8 of the Maharashtra Land Revenue Code, 1966, being a Survey Officer, Deputy Superintendent of Land Records, Kagal has carried out the measurement. Having regard to the counter-claim set up by the defendants as also in view of Section 5 of the Act, the measurement map prepared by Deputy Superintendent of Land Records is a relevant fact. The learned trial Judge rejected the application on the ground that this is not a public document, which cannot be directly exhibited and admitted in evidence. He submitted that the measurement map was prepared by the Deputy Superintendent of Land Records, who is a public officer, and therefore, the learned trial Judge ought to have held that it is a public document.

5. On the other hand, Mr. Oka supported the impugned order. He further submitted that matter is kept for arguments.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. As noted earlier, defendants, while resisting the Suit, have also set up counter-claim of mandatory injunction directing the plaintiff to remove the illegal encroachment carried out in their property. It is not in dispute that defendants have not applied for appointment of Court Commissioner for the purpose of finding out whether plaintiff in fact has committed encroachment in their property. The reliance is placed on measurement map dated 25.05.2012, which is at serial No.2 of the list of document at exhibit-121. Perusal of this map shows that defendant No.5 and S/Sh. Bhimrao Baburao Gavandi, Shivaji Babu Kadam, Tanaji Krushna Bodake and Jaysingh Aananda Bodake were present at the time of carrying out measurement. It is not in dispute that plaintiff is not one of the persons, who were present at the time of carrying out measurement. The issue in the present case is whether as claimed by defendants, plaintiff has committed encroachment in their property. As it is not in dispute that plaintiff was not present at the time of carrying out measurement, it cannot be said to be relevant document for deciding the controversy between the parties.

7. Mr. Patil relied upon Section 2(17) of C.P.C. which defines the expression 'public officer' and in particular clause (g) thereof, which provides public officer means every officer whose duty it is, to make any survey, assessment or contract on behalf of the Government, etc. Perusal of the impugned order shows that the measurement was carried out at the behest of defendant No.5. In other words, survey was not carried out on behalf of the State Government. That apart, the learned trial Judge observed that the measurement map is not a public document. The said document cannot be directly exhibited and admitted in evidence unless defendants examine the Surveyor, who prepared the map. Section 83 of the Act reads thus,

“83. Presumption as to maps or plans made by authority of Government.- The Court shall presume that maps or plans

*purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; **but maps or plans made for the purposes of any cause must be proved to be accurate.***

(emphasis supplied)”

8. Section 83 of the Act lays down that the Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate. Understood thus, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

9. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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