

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6232/2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Sandesh D. Patil i/b. Chintan Y. Shah for the petitioner

Mr. Devendra Shukla & Yogesh Dalvi for the respondent Nos.1 and 5.

CORAM : K. K. TATED, J.

DATE : JUNE 13, 2016

P.C.:

1. Mentioned. Not on board. At the request of learned counsel for the petitioner, the matter is taken on board for urgent orders.

2. By this petition under Article 227 of the Constitution of India, the petitioner defendant Nos.1 and 2 challenge order dated 29.04.2016 passed by the Civil Judge, Junior Division, Wada below exhibit 30 in Regular Civil Suit No. 118/2015 allowing the application made by the respondent plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of a Court Commissioner for measurement of the agricultural land Survey No.268/2 of village Aabitghar, Tq. Wada.

3. The learned counsel for the petitioner defendant submits that by the impugned order, the court was allowed the plaintiff to collect the evidence through the court commissioner. In support of this contention, he relies on the judgment of this court (Nagpur Bench) reported in **2001 (1) Bom C.R. 800 Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare & Ors.** Hence, the impugned order is liable to be set aside.

4. On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the petition. He submits that by the impugned order the court has directed the court commissioner only to measure land being Sy. No.268/2. In support of this contention, he submits that whenever there is dispute about the area of the vacant land, the court may appoint TILR or any other expert person to measure the same and submit his report. In support of his contention, he relies on the judgment of this court in the matter of **Kolhapuri Bandu Lakade Vs. Yallappa Chinappa Lakade 2011 DgLaw (Bom) 1803.** On the basis of this submission and the authority, he submits that there is no substance in the Writ Petition. Same be dismissed with costs.

5. Heard both sides at length. It is to be noted that, in the present proceedings, the plaintiff respondent instituted Regular Civil Suit No. 118/2015 for injunction restraining the defendant from encroaching upon their agricultural land. In that suit, they made an application for appointment of a court commissioner to measure Sy. No.268/2 to verify the exact area of the same. In the plaint, the plaintiff specifically stated that the area of their block No.268/2 was 4H 18R. It is to be noted that, in the authority cited by the petitioner, the issue was whether the court can appoint a court commissioner to find out the actual possession of the person over land. That is not the case in hand. Even this court in the matter of Kolhapuri Bandu Lakade (supra), specifically held that whenever there is a dispute about the vacant land/agricultural land about the boundary area, the court can appoint a commissioner to take assistance.

6. Considering the impugned order passed by the trial court and the law declared by this court in the matter of Kolhapur Bandu Lakade (Supra), I do not find any substance in the Writ Petition. Same stands rejected.

JUDGE