

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1712 OF 2016

GOPINATH ISHWAR DHONE DIED THROUGH LRS
VERSUS
BABURAO SADASHIV DHONE AND OTHERS

...

Advocate for Petitioners : Shri Solshe Vinesh C
Advocate for Respondents 1 to 4 : Shri Patne Santosh N.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: June 19, 2017

...

PER COURT :-

1. The petitioners are aggrieved by the order dated 1.12.2015 passed by the trial Court by which, the petitioners / plaintiffs are directed to deposit the entire measurement fees and the fee share of the defendants would be recovered if the suit is allowed.

2. I have heard the learned Advocates for the respective sides.

3. The defendants submit that because of the drought situation, they are unable to deposit the fees as are proposed by the Taluka Inspector of Land Records ("TILR").

4. Neither the petitioners have pleaded in this petition, nor have the learned Advocates for the litigating sides taken any instructions as to how much amount was mentioned by the office of the TILR as

the total fees for measurement purposes. It is unexpected that the litigating sides cannot mention the amount of fees that are required to be deposited in the backdrop of claiming lack of funds due to drought situation.

5. The trial Court had ordered that the entire suit land, the lands of the defendants and the adjoining lands would be measured after depositing the respective shares of the measurement fees by the litigating sides. Despite these directions, passed on 24.9.2014 and the petitioners having deposited their share, the respondents / defendants have not deposited their shares, in my view, apparently, to scuttle the progress of the suit.

6. Learned counsel for the petitioners / plaintiffs submits that they are not in a position to deposit the share of the defendants, because of paucity of funds. He strenuously submits that the defendants are deliberately not depositing their shares, so that the measurement of the land would be delayed and as a consequence, the suit would also be delayed. Yet, in this backdrop, the trial Court has passed a fresh order dated 1.12.2016 impugned in this petition directing the petitioners to pay the entire measurements fees.

7. Considering the above and the stand taken by the defendants, which is apparently with oblique motives, this petition is allowed.

The order of the trial Court dated 1.12.2015 is quashed and set aside. As per the orders dated 29.9.2015 and 24.9.2014, if the defendants do not deposit their equal shares before the trial Court on/or before the 21.7.2017, the trial Court would then strike off the defense of the defendants and the petitioners may then deposit the amount and the measurements can be carried out.

(RAVINDRA V. GHUGE, J.)

...

akl/d