

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2106 OF 2017

1. Hanuman s/o Shripati Shinde,
Age : 62 years, Occu: Agril,
R/o : Malegaon, Tq. Shevagaon,
Dist. Ahmednagar.
2. Bharat s/o Hanuman Shinde,
Age : 28 years, Occu: Agril,
R/o Malegaon, Tq. Shevagaon,
Dist. Ahmednagar.
3. Baby w/o Hanuman Shinde,
Age : 51 years, Occu: Agril and Household
R/o : Malegaon, Tq. Shevagaon,
Dist. Ahmednagar ...Petitioners

Versus

1. Kacharu s/o Ashok Deshmukh
Age : 38 years, Occu: Agril,
2. Shobha w/o Kacharu Deshmukh,
Age : 34 years, Occu: Agril and Household,
Respondent nos. 1 and 2 R/o. Appegaon,
Tq. Shevgaon Dist. Ahmednagar
3. Sonaba s/o Damu Kedar,
Age : 53 years, Occu: Agril
4. Laxman s/o Mahadu Nikam,
Age : 55 years, Occu: Agril,
Respondent Nos. 3 and 4 R/o.
Malegaon Tq. Shevgaon,
Dist. Ahmednagar.
5. Prashant s/o Jaggannath Pathak,
Age : 38 years, Occu: Agril,
R/o Tisgaon Tq. Pathardi,
Dist. Ahmednagar. ...Respondents

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Mr. Yuvraj V. Kakade, Advocate for petitioners
Mr. P. A. Bharat, Advocate for respondents no. 1 and 2

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 08th June, 2017

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Petitioners are defendants no. 1 to 3 in Regular Civil Suit no. 355 of 2014, instituted by respondents-plaintiffs no. 1 and 2 seeking injunction in respect of land described in the plaint and as well as for measurement of said land and, if upon measurement, any encroachment is found, for removal of the same. In response, the petitioners-defendants in their written statement in paragraph no. 23 have referred that there has been a way of 30' from Malegaon to Appegaon, and as such, no encroachment has taken place and requested for appointment of Court Commissioner for inspection of position. During pendency of the suit, plaintiffs-respondents no. 1 and 2 have filed application exh. 42, seeking appointment of Deputy

Superintendent of Land Record as Court Commissioner for measurement of suit property, admeasuring 76 Aar from gut no. 77 situated at village Appegaon Tq. Shevgaon Dist. Ahmednagar.

3. The application came to be opposed by the defendants referring to that the same may tantamount to collection of evidence.

4. Appellate court, however, has allowed the application directing measurement authority to measure the land gut no. 77 as prayed for in application exh. 42.

5. Learned counsel for the petitioners submits that petitioners-defendants are owners of part gut no. 146, adjoining land, as such, it would be incumbent to measure the land claimed by the plaintiff as well as gut no. 146.

6. Learned counsel for respondents-plaintiff, on instructions, does not have any particular resistance to measurement of land gut no. 146 being made.

7. In the circumstances, it appears to be expedient, having regard to the interest of parties that, both the lands be measured alongwith development thereon, and be

reported as directed under impugned order dated 13th December, 2016. Measurement be carried out as per direction of the trial court with modification that the lands i.e. gut no. 77 and 146 be measured. Writ petition is allowed to aforesaid extent and stands disposed of.

8. Rule made absolute accordingly.

[SUNIL P. DESHMUKH, J.]

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