

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1361 OF 2011

01 Ratan Madan Patel,
age: 70 years, Occ: Agricultural,
R/o Near Masjid, Harsool,
Tq. & District Aurangabad.

02 Noor Ratan Patel,
age: 49 years, Occ: Agricultural,
R/o Near Masjid, Harsool,
Tq. & District Aurangabad.

03 Gani Ratan Patel,
age: 46 years, Occ: Agricultural,
R/o Near Masjid, Harsool,
Tq. & District Aurangabad.

04 Rasool Ratan Patel,
age: 44 years, Occ: Agricultural,
R/o Near Masjid, Harsool,
Tq. & District Aurangabad.

05 Sattar Ratan Patel,
age: 44 years, Occ: Agricultural,
R/o Near Masjid, Harsool,
Tq. & District Auranabad.

06 Jabbar Ratan Patel,
age: 39 years, Occ: Agricultural,
R/o Near Masjid, Harsool,
Tq. & District Aurangabad.

07 Taher Ratan Patel,
age: 36 years, Occ: Agricultural,
R/o Near Masjid, Harsool,
Tq. & District Aurangabad.

08 Muktar Ratan Patel,
age: 34 years, Occ: Agricultural,
R/o Near Masjid, Harsool,
Tq. & District Aurangabad.

Petitioners

Versus

01 Qaisaruddin s/o Daud Siddiqui,
age: 67 years, Occ: Agricultural,
House No.1-17-27, Mominpura,
Tq. & District Aurangabad.

02 Shamim Begum Qaisaruddin Siddiqui,
age: 60 years, Occ: Agricultural,
House No.1-17-27, Mominpura,
Tq. & District Aurangabad.

Respondents

Mr.Ajeed D. Kasliwal, advocate for the petitioners
Mrs.A.N.Ansari, advocate for Respondents No.1 & 2.

CORAM : S.B.SHUKRE, J.

DATE : 16th February, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 No doubt, there is provision under Order XXVI Rule 9, which confers powers upon Civil Court to appoint a Court Commissioner for carrying out local investigation for elucidation of any matter in dispute. On its own, without there being any application filed in that regard by any of the parties, such power could be exercised by the Court, however, only when some clarification or elucidation is required.

3 In the instant case, it is not in dispute that there is already in existence one measurement report based upon the measurement done by a Cadastral Surveyor well before filing of the suit and this report, now for some reasons, is not acceptable to the

original plaintiffs. But, admittedly, the original plaintiffs did not challenge this report of Cadastral Surveyor, though they could have done so. Neither the plaintiffs applied to examine the Government surveyor nor the trial Court thought it fit to summon the Cadastral Surveyor as a witness to assist the Court in the matter. In this background, the trial Court has allowed the application of the original plaintiffs for appointing T.I.L.R., Aurangabad, as the Court Commissioner. If the T.I.L.R. is now permitted to take fresh measurements, a situation would arise when he would be confronted with the first measurement report and in that case, there would be two measurement reports on record, which would only lead to confusion. Thus, it is likely that in stead of addressing the issue of clarification, the appointment of T.I.L.R. may only compound this situation.

4 Viewed in this way, I find that the impugned order dated 31.01.2011 is illegal and cannot be sustained in the eye of law.

5 In the result, writ petition is allowed with costs. The impugned order dated 31.01.2011 is quashed and set aside. Rule is made absolute in above terms.

S.B.SHUKRE
JUDGE

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