

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6608 OF 2016
WITH CA/9967/2016 IN WP/6608/2016

NAMDEO KISAN MARKAD
VERSUS
VASANT KACHARU KALE AND ANOTHER

...

Advocate for Petitioner : Shri Bipinchandra K.Patil
Advocate for Respondent 1 : Shri P.K.Nikam
Advocate for Respondent 2 : Shri Shivaji R.Madhekar

...

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

...

PER COURT :-

1. The petitioner is aggrieved by the order dated 9.12.2015 passed by the appellate Court, by which, application Exhibit 15, praying for appointment of a Court Commissioner has been rejected.

2. The petitioner submits that he is the original defendant No.1 in RCS No.37 of 2009. Defendant No.2 had sold out 11 Ares land to the petitioner by a sale deed dated 11.6.1987. The plaintiff had initiated the suit for seeking a declaration that the said sale deed is not binding upon him and had prayed for perpetual injunction against the defendants.

3. Grievance of the petitioner is that after he preferred RCA

No. 131 of 2011, he felt that a Court Commissioner needs to be appointed to measure the suit land in its entirety so as to trace out the 11 Ares land, which he has purchased from original defendant No.2. Unless the suit land is not properly measured, the 11 Ares land existing on the Northern side of the plaintiff's property near the Nala cannot be located.

4. I find from the judgment of the trial Court that the Taluka Inspector of Land Records was appointed as a Court Commissioner. Measurement was carried out by following the due procedure of law. 11 Ares land on the northern side of the Nala was untraceable. The Court Commissioner was summoned as a witness by this petitioner and was subjected to cross-examination. On the basis of the map, the report and the revenue records, the trial Court concluded that 11 Ares land as claimed by the petitioner was not in existence at the purported location and defendant No.2 had, therefore, got a sale deed executed on 10.6.1997 without the said land being in existence.

5. It also appears from the judgment of the trial Court that the map and the report was not found to be erroneous. Merely because the map and the report did not suit the convenience of the petitioner, that a Court Commissioner cannot be appointed

for the second time. The appeal Court is considering the pending appeal and the entire record and proceedings are before it. Considering the law laid down in the case of Chandrarao Hanumantrao Wable Vs. Dhondu Fula Patil [2012 (2) Mh.L.J. 847], the second Court Commissioner cannot be appointed only because the report of the first Court Commissioner is not found to be convenient by one of the litigating sides and after the Court Commissioner has been put to cross-examination.

6. I do not find that the petitioner has made out any such grounds which could convince this Court that a second Court Commissioner deserves to be appointed. Merely because such an appointment would not cause any hardship, cannot be a ground for ignoring the report of the first Court Commissioner and cause such an appointment.

7. This petition being devoid of merits is, therefore, dismissed.

8. Pending Civil Application does not survive and it accordingly stands disposed off.

(RAVINDRA V. GHUGE, J.)

...

akl/d