

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3048 OF 2014

Baliram S/o Bhau Hingmire
Age : 35 years, Occu.: Agri.,
R/at : Kaudgaon, Tal. and
Dist. Osmanabad

.. Petitioner

Versus

1. Shivmurti S/o Ghansham Hingmire,
Died through LRs.

1-A. Kamalbai Shivmurti Hingmire,
Age : 65 years, Occu.: Nil,
R/at : Kaudgaon, Tal. and
Dist. Osmanabad

1-B. Devidas S/o Shivmurti Hingmire,
Age : 50 years, Occu.: Agri.,
R/at : Kaudgaon, Tal. and
Dist. Osmanabad

1-C. Bharat S/o Shivmurti Hingmire,
Age : 45 years, Occu.: Agri.,
R/at : Kaudgaon, Tal. and
Dist. Osmanabad

1-D. Shankar S/o Shivmurti Hingmire,
Age : 43 years, Occu.: Agri.,
R/at : Kaudgaon, Tal. and
Dist. Osmanabad

.. Respondents

...
Mr. V.R. Bhumkar, Advocate for petitioner
None present for respondents 1-A to 1-D though served.

...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 12-12-2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for petitioner finally.

2. Despite notice on second occasion intimating that the petition would be taken up for final hearing at the admission stage, no appearance is caused on behalf of the respondents.

3. Learned counsel for petitioner Mr. Bhumkar points out that suit has been filed for removal of encroachment over land in gat no. 21 against respondents, who are adjoining land owners and related to the petitioner. Before approaching the court, an attempt had been made to have their land measured through taluka inspector of land records, however, that was resisted by the respondents. As such, suit had been filed for removal of encroachment and an application had been made for appointment of taluka inspector of land records as court commissioner for measurement of land, however, that application (Exhibit-10) came to be rejected under order dated 16-12-2004 considering that there was no attempt by petitioner to have measurement of the land on his own. Subsequently, having regard to the order passed, application had been made to have measurement of the land to taluka inspector of land records. The measurement was not

allowed by defendant and *panchanama* depicting the same had been drawn on 28-05-2007.

4. Thereafter, application Exhibit-79 had been moved for appointment of court commissioner. However, the same came to be rejected as the advocate of the petitioner could not make it to the court and considering that earlier attempt to have appointment of court commissioner had failed. Suit is for recovery of possession of land, by removing encroachment and it appears that there have been attempts by petitioner to cause measurement of land through taluka inspector of land records had not borne out fruits due to resistance by defendants and on earlier occasion, there has been rejection of application for appointment of taluka inspector of land records as court commissioner because the petitioner had not approached the office of taluka inspector of land records. It appears from the documents that subsequent to order passed by court on exhibit-10, there have been attempts to have measurement of land through taluka inspector of land records, the same could not take place due to resistance of the defendant-respondent.

5. In the circumstances, there does not appear to be resistance to application Exhibit-79, except, technical objection that earlier application has been filed and rejected, taking overall view of

the matter and the nature of suit, it appears to be expedient that the application be granted. As such, application Exhibit-79 stands allowed. Writ petition stands disposed of.

6. Rule made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/