

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3497 OF 2016

MAHADU MARUTI JAWALE AND OTHERS
VERSUS
PRALHAD BHANUDAS JAWALE

...

Advocate for Petitioners : Shri Bora Satyajit S.
Advocate for Respondents : Shri Vaidya Ameet R.

...

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

...

PER COURT :-

1. This matter was heard at length.
2. Issue before the trial Court in RCS No.93 of 2014 is with regard to the declaration of ownership and perpetual injunction sought by the petitioners with regard to land Gut No.590. The Written Statement filed by the respondent, who claims ownership and title over the land situated in Gut No.592 indicates that his land is on the western side of Gut No.590. The petitioner claims that Gut No.592, is on the southern side of Gut No.590.
3. This matter was adjourned on 14.6.2017 to enable the parties to seek instructions as to whether the Court Commissioner could be appointed for measuring lands Gut Nos.590 and 592, for fixation of the boundaries and preparation of a map with correct directions.

4. The learned Advocates for the respective sides submit on instructions, today that so far as the dispute about the directions is concerned, same is sub-judice before the Settlement Commissioner under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. The matter is reserved for orders.

5. Considering the above, this petition is disposed off by permitting the litigating sides to make a joint application or the plaintiffs may do so for seeking appointment of the TILR as the Court Commissioner under Order XXVI Rule 9 of the CPC. The defendants would not oppose the said application in so far as appointment of the Court Commissioner is concerned. Such an application would be filed by either of the parties or jointly, within a period of four weeks from today.

6. The trial Court, while allowing the said application, would take the assistance of the litigating sides and issue appropriate directions to the TILR to carry out the joint measurements of the land Gut Nos.590 and 592. He shall be directed to fix the boundaries and submit a proper map indicating the proper directions.

7. After the above exercise is concluded and the map and report of the TILR is placed on record, the petitioners / plaintiffs would be

at liberty to move an application for amendment based on the map and report of the TILR, under Order VI Rule 17 CPC, if felt necessary. Needless to state, the contentions or objections, if any, on the report of the TILR and amendment are left open. The impugned order dated 9.2.2016 would, therefore, not been an impediment.

(RAVINDRA V. GHUGE, J.)

...

akl/d