

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4143 OF 2016
(Pandurang Ganpat Narsale and others Vs. Vishnu Tukaram Narsale)

Mr.N.K.Tungar, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/12/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 23/11/2015 by which the Trial Court has allowed the application Exh.42 in RCS No.305/2011 directing the appointment of a Court Commissioner after the recording of oral evidence had commenced.

2. The petitioners are the original defendants. Grievance is that the respondent/plaintiff has preferred the suit only for seeking injunction and preventing the defendants from interfering with his right to use a *Wahiwat*. It is strenuously contended that neither are the defendants encroaching upon any portion of the land of the plaintiff, nor are they obstructing him with reference to the *Wahiwat* which is from his own land.

3. It is then submitted that the plaintiff, while preferring the suit,

had got his suit land Block No.606 measured and has submitted a map alongwith the plaint. Once the land is measured and the map which is an outcome of the measurement, is placed on record, there was no necessity for directing re-measurement of the land by appointing a Court Commissioner. Reliance is placed upon the judgment of this Court in the matter of Chandrarao s/o Hanumantrao Wable Vs. Dhondu s/o Fula Patil [2012(2) Mh.L.J. 847].

4. I have gone through the petition paper book and the record available in the light of the submissions of the learned Advocate for the petitioners.

5. The thrust of the petitioners' submissions are 2 fold. Firstly, that when the suit land has already been measured, there is no requirement of re-measurement in the light of the view taken by this Court in Chandrarao Wable case (supra) and secondly, the property Block No.607 which is also directed to be measured by the Trial Court, is not a suit property.

6. I find from the pleadings of the parties that the dispute is with regard to the *Wahiwat* between Block No.606 and 607. Block No.606

is owned and possessed by the plaintiff and Block No.607 is owned and possessed by the defendants. A *Wahiwat* is said to be positioned in between the 2 blocks. Since the learned Advocate for the petitioners vehemently contended that there is no boundary dispute, I called upon him to make a statement as to whether he concedes the demarcation of the *Wahiwat* as appearing in the map appended to the plaint. Learned Advocate has taken time by seeking a pass over and after the matter was called out, no statement is made.

7. It is evident from the pleadings that the dispute being in connection with the *Wahiwat* between the 2 blocks, obviously a boundary dispute would arise and that would be subject matter of adjudication of the Trial Court since the Trial Court would not be in a position to allow the suit unless it is convinced that the *Wahiwat* is properly marked and the boundaries of the properties of the plaintiff and the defendants are marked. As such, the entire issue would turn upon the boundaries of the suit property Block No.606 as well as the land of the defendants which is Block No.607.

8. This Court has consistently held that when it comes to such disputes, it is always in the interest of justice that the joint measurement of the properties of the litigating sides is made and the

boundaries are fixed which would always assist the Trial Court. It is also consistently held by this Court that where there is any boundary dispute or disputes touching boundary limits, joint measurement is necessary and fixing of the boundaries in such a manner would not amount to collecting evidence.

9. In this backdrop, the view taken by this Court in Chandrarao Wable case (supra) would not be applicable since a re-measurement of the suit property alone was directed by the Trial Court after the final hearing in the matter had commenced. Hence the appointment of a Court Commissioner for re-measurement of the land was not sustained.

10. Considering the above and keeping in view the Law laid down by the Hon'ble Apex Court in Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], I don't find that the impugned order could be termed as being perverse or erroneous.

11. This petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)