

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5623 OF 2015

FASIUDDIN NIYAZUDDIN PIRZADE LRS SHAHDATBI
AND OTHERS.

VERSUS

YASINBI BADARUDDIN PIRZADE AND OTHERS.

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Advocate for Petitioners : Mr Sk.Mujtaba Gulam Mustafa

Advocate for Respondents : Mr Patil Vijay B. For R/2 To
5 And 8 To 10

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CORAM : V.K. JADHAV, J.

Dated: December 07, 2017

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PER COURT :-

1. Being aggrieved by the order passed below Exh.41 in Regular Civil Suit No.128 of 2004 passed by the 3rd Jt. Civil Judge, J.D. Jalgaon, dated 3.3.2015, original plaintiff approached to this Court by filing present writ petition.

2. Brief facts, giving rise to the present writ petition, are as follows :-

a] Petitioner/plaintiff has instituted the suit for declaration of ownership and permanent injunction in respect of the house Grampanchayat No.912. According

to the petitioner/plaintiff, grampanchayat house No.912 bears CTS No.927 situated at Mehrun Tq. & Dist. Jalgaon. By filing an application exh.41 petitioner/plaintiff has prayed for appointment of the Court Commissioner for local inspection of the suit site and for the location and fixation of the boundaries and for preparing the map. The learned Judge of the trial court, by impugned order dated 3.3.2015 rejected the application exh.41.

3. Learned counsel for the petitioner submits that, petitioner/plaintiff had purchased the above stated property from deceased Badrudding. Respondents/defendants are the legal heirs of deceased Badruddin. Learned counsel submits that, house Grampanchayat no.912 is having CTS No.927 and area of the said grampanchayat house number is 54.35 square meters. However, the same has been mistakenly shown as 29.5 sq.mtrs which is reflected in the record of City survey no.927. On the basis of the said mistake, respondents/defendants are denying the title of the

plaintiff over the CTS No.927. Learned counsel submits that, the petitioner has approached the city survey office as well as Municipal authorities to obtain the documents in respect of the suit property, however, both the offices have informed to the petitioner that record is not available. Learned counsel submits that, the petitioner, thus, left with no other option but to apply for appointment of the Court commissioner to inspect the suit plot and record the boundaries by considering the documents of the C.T.S. record. However, the learned judge of the trial court has, erroneously turned down the said request by rejecting the application Exh.41.

4. Learned counsel for respondents/defendants submits that, the petitioner had already filed an appeal before the District Inspector of Land Records vide application No.68/1998 for the same purpose and said application came to be dismissed. Being aggrieved by the same, the petitioner/plaintiff has preferred appeal before the Commissioner, Nashik, however, he himself

withdrew said appeal. Learned counsel submits that, it is for the petitioner/plaintiff to adduce necessary evidence to show that the Grampanchayat house No.912 is the CTS No.927 and said evidence cannot be collected through the Court Commissioner.

5. On perusal of the application Exh.41 and impugned order passed by the Trial Court, it appears that, prima facie, there is no record available to indicate that grampanchayat house No.912 is CTS No.927. There is no boundary dispute in this case. Though, the petitioner/plaintiff had an opportunity to pursue the remedy for obtaining the record in respect of grampanchayat house no.912, however, the petitioner/plaintiff himself withdrew the appeal preferred before the superior authority against the order passed by the District Inspector of Land Records, Jalgaon. It is for the petitioner/plaintiff to prove his case by adducing evidence. The learned Judge of the Trial Court has, thus, rightly observed that, the Court Commissioner cannot be appointed for collection of the

evidence. I find no fault in the order passed by the learned Judge of the trial court. There is no merit in this writ petition. Writ Petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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