

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6797 OF 2015

RAMA DHARMA KAMBLE
VERSUS
BHIMA DHARMA KAMBLE AND OTHERS

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Advocate for Petitioner : Shri Jaju Nikhil S.
Advocate for Respondents 1 to 3 : Shri Bharat Pankaj A.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 27, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 23.3.2015, by which, the trial Court has rejected application Exhibit 32, praying for appointment of the Deputy Superintendent of Land Records, as a Court Commissioner.

2. It is undisputed at this stage that the issues have been cast and the stage is for recording of oral evidence. It is also undisputed that during the pendency of this petition, the prayer of the petitioner / plaintiff for amending the plaint and adding the prayer for recovery of possession lost on account of encroachment, has been allowed and necessary pleadings to that effect are now on record. It is equally undisputed that the defendants are disputing the boundaries and there has not been

a joint measurement of the properties of the litigating sides.

3. It is trite that when the boundaries are disputed, a Court Commissioner could be appointed for a joint measurement of the properties of the litigating sides, inclusive of the suit property, fixing of boundaries and preparations of map. Normally a Court Commissioner is not to be appointed unless the issues are cast and the recording of the evidence has commenced. From that angle, this petition could have been disposed off. However, it is now informed that the averments regarding encroachment and the prayer for recovery of encroached portion have been brought on record in the plaint. It is only in these peculiar and changed circumstances that I am entertaining this petition without laying down a precedent.

4. Taking into account the peculiar events and the undisputed position that the boundaries have not been admitted, this petition is partly allowed. The impugned order dated 23.3.2015 is quashed and set aside. Application Exhibit 32 is allowed only to the extent of permitting the appointment of the Taluka Inspector of Land Records, Taluka Shevgaon, District Ahmednagar ("TILR") as a Court Commissioner for the joint measurement of the properties of the litigating sides, inclusive of

the suit property, fixation of the boundaries and for submission of a map and a report, by following the due procedure laid down in law.

5. The litigating sides shall jointly state the date on which the joint measurement could be carried out in their presence, to the Civil Court and accordingly, the Court shall direct the TILR to conduct the measurement on the date so fixed. The TILR shall mention the encroachment, if any, while preparing the map and his report. It is expected that the activity of the TILR as a Court Commissioner will be completed within a period of eight weeks.

(RAVINDRA V. GHUGE, J.)

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