

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6623 OF 2016
(Kundalik Shriram Sirsat and others Vs. Parasram Sarjerao Sirsat)

Mr.G.B.Kulkarni, Advocate for the petitioners.
Ms.M.R.Jamdhade, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/06/2017

PER COURT :

1. I have heard the strenuous submissions of the learned Advocates for the petitioners and the respondent and have gone through the petition paper book with their assistance.

2. The petitioner is aggrieved by the impugned order dated 02/05/2016 delivered by the learned Civil Judge, J.D., Badnapur, by which application Exh.15 filed by the respondents is allowed and the TILR, Badnapur is appointed as a Court Commissioner to measure C.T.S. No.71 at Padali, Tal.Badnapur.

3. It appears from the application Exh.15 that the respondent/original plaintiff had moved an application for measurement of the suit land. Appointment of TILR was sought.

Earlier measurement and the map dated 09/07/2013 was filed in the proceedings. Contention of the respondent was that the encroached portion is not mentioned.

4. Learned Advocate for the respondent strenuously submits that the earlier measurement and the map submitted by the TILR is erroneous. The said measurement and the map deserves to be discarded. It was on the basis of such pleadings that the plaintiff had sought appointment of the Court Commissioner. It is vehemently submitted that unless the map indicates the encroached portion, the Trial Court would not be adequately assisted.

5. I find from the impugned order that the Trial Court has not arrived at a conclusion that the earlier measurement and the map dated 09/07/2013 are erroneous, cannot be relied upon and deserves to be discarded. No such conclusion has been arrived at. In fact, the TILR, after measuring the land, by giving opportunities to the litigating sides, had fixed the marking and had submitted the map. Unless the Trial Court concluded that the earlier measurement deserved to be discarded, it could not have appointed the TILR for a re-measurement.

6. It is concluded by the Trial Court in paragraph No.5 that, "*considering the nature of suit and as plaintiff is ready to pay requisite fees so, it will be proper to give one more opportunity to plaintiff by allowing present application.*" I find this conclusion to be erroneous and such a reason for directing re-measurement of the suit land cannot be permitted especially when the land has already been measured by the TILR on an earlier occasion.

7. Considering the above, this petition is allowed. The impugned order dated 02/05/2016 is quashed and set aside and application Exh.15 in RCS No.121/2013 stands rejected. Needless to state, in the event the earlier report of the TILR dated 09/07/2013 alongwith the measurement map is proved to be erroneous and unreliable, the litigating sides would be at liberty to take recourse available in law.

8. This Court (Coram : Sunil P.Deshmukh, J.) had passed an order on 28/06/2016 while issuing notice thereby observing that in case the measurement has taken place, its report should not be disclosed until further orders from this Court. Learned Advocate for the respondent has submitted a copy drawn from the certified copy of the Court Commissioner's report dated 20/07/2016 indicating the contents of the report. The said copy is taken on record and marked

as Exhibit “X” for identification. It, therefore, appears that the Trial Court has overlooked and ignored the direction of this Court vide its order dated 28/06/2016. The Registrar (Judicial) of this Court shall therefore call for an explanation from Smt.R.S.Adkine, learned Civil Judge, J.D. Badnapur to explain as to why the direction of this Court has not been complied with and has been ignored.

(Ravindra V.Ghuge, J.)