

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7141 OF 2016
WITH CA/14519/2016 IN WP/7141/2016

RAM KISAN JADHAV
VERSUS
LALITHA DYNABA JADHAV AND OTHERS

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Advocate for Petitioner : Shri Rakh A.V. h/f Shri Kendre N.D.
Advocate for Respondents 1 to 4 : Shri Patil Milind

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 24, 2017

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 6.4.2015, passed by the trial Court, by which, Exhibit 44, filed by the petitioner seeking appointment of a Court Commissioner has been rejected.

2. I have considered the submissions of the learned Advocates for the respective sides.

3. The record reveals that an application Exhibit 22 was filed by the plaintiff for seeking appointment of a Court Commissioner in RCS No.74 of 2013. By the consent of the defendants, the said application was allowed and the District Superintendent of Land

Records has carried out the measurement and has submitted a report with the measurement map at Exhibit 32. Issues have been cast thereafter. Temporary injunction has already been granted to the plaintiff, though it was inadvertently stated on 15.10.2015 before this Court that temporary injunction is yet to be granted.

4. The petitioner submits that though objections on Exhibit 44 seeking appointment of a second Court Commissioner were called for, the defendants have not tendered their say to the said application. It is, therefore, canvassed that Exhibit 44 should have been allowed.

5. Merely because the defendants may not have formally objected to Exhibit 44 or may be said to have given their tacit consent, it would not impress upon the trial Court that the said application will have to be allowed. The appointment of the Court Commissioner is permitted only when the Court is convinced that such appointment is with regard to the dispute about the boundaries or if there is any encroachment. A second Court Commissioner is to be appointed in rare and exceptional circumstances and that too when the parties have led evidence and established that the report of the earlier Court

Commissioner's measurement is bad and cannot be relied upon.

6. In this case, the parties are yet to establish that the report Exhibit 32, the panchanama and the measurement map are untrustworthy or unreliable. In these set of facts, I do not find that the trial Court has committed any error in rejecting application Exhibit 44.

7. This petition being devoid of merits is, therefore, dismissed.

8. Pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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