

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

944 WRIT PETITION NO. 11062 OF 2015

DEVIDAS ANEBA GADADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. A. R. Tapse.
AGP for Respondent No.1 : Mr. N. T. Bhagat.
Advocate for Respondent No.2 : Mr. S. S. Thombre.

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CORAM : **V. K. JADHAV, J.**
DATE : 29th November, 2017.

ORDER:

. The application Exhibit 18 filed by the Petitioners / original Plaintiffs for appointment of Court Commissioner for carrying out the measurement of the suit land came to be rejected. Hence, this writ petition.

2 The learned counsel for Petitioners submits that the predecessors in-title / original owners of land Survey No.279-A admeasuring 15 Acres 27 Gunthas of land, sold the land admeasuring 11 Acres 31 Gunthas in favour of Defendant No.2 under the registered sale-deed on 25th September, 1991. The learned counsel submits that in the consolidation scheme, the area belonging to the ancestors of the Plaintiffs was totally admeasuring 15 Acres 27 Gunthas and after

alienation of 11 Acres 31 Gunthas land as aforesaid to Defendant No.2, an area admeasuring 3 Acres 13 Gunthas remained in physical possession of the ancestors of the Plaintiffs. The learned counsel submits that the Petitioners / Plaintiffs have therefore, instituted the suit for declaration that Defendant No.2 is in possession of excess land than the land as shown in the sale-deed from the land Survey No.279-A and also for decree of possession and mandatory injunction etc. The learned counsel submits that despite the alienation of the land out of land Survey No.279-A, the land admeasuring 3 Acres 13 Gunthas belonging to the Petitioners / Plaintiffs is still existing. The said land is in possession of Defendant No.2 and thus, for proper adjudication of the dispute involved in the suit, it is necessary to measure the entire land in possession of Defendant No.1.

3 The learned counsel for Petitioners in order to substantiate his submissions placed his reliance on the following two cases:

- a) **Shyam Janardan Chaoudary Vs. Smt. Asha Ramdas Katkar & anr.**, reported in, **2014 (6) BOB.C.R. 576.**

b) **Ramzan Sheikh Chand Sheikh (since deceased) through his LRs. & ors. Vs. Panjab s/o Nathuji Gawande**, reported in, **2014 (4) BOM.C.R. 857.**

4 The learned counsel for Respondent No.2 supported the order passed by the Trial Court.

5 On perusal of the plaint, it appears that, the Petitioners / Plaintiffs in paragraph 3 have specifically pleaded that after the sale-deed executed by the ancestors of the Plaintiffs, they have got measured the total land during their life time including that of the land covered under registered sale-deed in favour of Defendant No.2 by Measurement No.236 of 1992. On 11th January, 1993 the concerned authority also prepared a map showing that the land in physical possession of Defendant No.2 to the extent of 15 Acres 4 Gunthas.

6 In view of the aforesaid pleadings, I do not find any justification for filing an application Exhibit 18 again for appointment of Court Commissioner. The Trial Court has rejected the same with the observations that this is nothing but an attempt to collect supporting evidence. I do not find any fault in the impugned order. There is no

substance in the writ petition. Hence, the following order:

ORDER

The writ petition is hereby dismissed. In the circumstances, there shall be no order as to the costs.

[V. K. JADHAV, J.]

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