

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8485 OF 2016

DADA NATHA CHAUDHARY
VERSUS
VISHWANATH SADASHIV ONKAR AND ANOTHER

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Advocate for Petitioner : Shri Joshi Milind M.
Advocate for Respondents : Shri Deokate M.G.
h/f Smt. Dhumal S.A.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 01, 2017

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PER COURT :-

1. This petition was in fact, disposed off by the judgment of this Court dated 28.7.2017, which was dictated in open Court. As the transcript was being prepared and before the judgment could be signed, I noticed that the aspect about the plaintiff claiming in the plaint that the land at issue is an agricultural land and hence, the valuation would depend upon the agricultural taxes (*shet-sara*), which was paid by the plaintiff last year, would be vital while considering the challenge to the valuation and payment of court fees. Since this aspect was not addressed by the litigating sides, I have *suo motu* placed this matter on board today and have further heard the learned Advocates for the respective sides, with their consent and understanding that this matter is being heard afresh.

2. There is no dispute that, by the impugned order dated 12.4.2016, application Exhibit 34 filed by the petitioner / defendant was rejected and the following two issues were answered against the defendant:-

- (a) Is the suit of the plaintiff maintainable? .. Yes.
- (b) Whether defendant proves that the suit is not valid properly? ..No.

3. It is equally undisputed that the contention of the plaintiff is that the defendant has encroached upon 4 acres and 20 gunthas. Per contra, the defendant contends that there is not an inch of encroachment. It is equally undisputed that the land inspected and evaluated by the Government valuer admeasuring 2 hectares, was the land claimed by the defendant and there are 400 sweet-lime trees which are about 10 years of age and 300 of sweet-lime trees, which are about 4 years of age.

4. Section 6(v) of the Maharashtra Court Fees Act clearly lays down that the agricultural land is not to be valued by the appointment of any valuer. The valuation will be based on the *shet sara* i.e. lastly paid by the owner and the court fees would be

about 80 times of the said *shet sara*.

5. The disputed aspect is that the plaintiff claims the suit land to be an agricultural land and the defendant contends that it is a garden, wherein, there are fruiting trees. This contention is strenuously contradicted by the plaintiff. In this backdrop, and keeping in view that the recording of evidence has commenced, both the learned Advocates on instructions, consent that a TILR could be appointed as a Court Commissioner to carry out the joint measurement of the properties of the litigating sides, fix the boundaries and indicate in the map along with the report, the existence of encroached portion, if any. Based on such report, the two issues reproduced above, can be revisited.

6. Considering the above, the impugned order dated 12.4.2016 is quashed and set aside and the matter along with application Exhibit 34 is restored before the trial Court for a decision on the above stated two issues afresh, on the following conditions:-

(A) The trial Court shall proceed to issue an order appointing the TILR, Aurangabad as the Court Commissioner.

(B) Both the litigating sides shall contribute the charges of the Court Commissioner in equal shares.

(C) The litigating sides would communicate a date and time on which the TILR could visit the suit property and the lands of the litigating sides for measurement and the litigating sides would remain present at the said spot and fully co-operate.

(D) The TILR be directed to jointly measure the lands of the litigating sides, fix the boundaries and prepare a map along with the report and mention the existence of encroachment, if any.

(E) The TILR be granted six weeks time for completing this exercise and thereafter, the litigating sides would advance their submissions on the above stated two issues to be considered on their own merits and in the light of the report of the TILR.

(F) Since the age of the power of attorney of the plaintiff is about 85 years, the trial Court shall

**endeavour to decide RCS No. 255 of 2010 as
expeditiously as possible and preferably on/or before
30.4.2018.**

(RAVINDRA V. GHUGE, J.)

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akl/d