

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11347 OF 2017

SHIVAJI GOVARDHAN SHINDE AND OTHERS
VERSUS
MADHUKAR SONA SHINDE AND ANOTHER

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Advocate for Petitioners : Mr. S.S. Gangakhedkar h/f Mr. R.R. Karpe

Advocate for Respondents : Mr. M.A. Jahagirdar

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CORAM : V. K. JADHAV, J.
DATED : 14th DECEMBER, 2017

PER COURT:-

1. Heard.
2. By this writ petition, the petitioners-original plaintiffs have challenged the order dated 29.6.2017 passed by the trial court below Exh.28 in R.C.S. No. 95 of 2013. The petitioners-plaintiffs have filed an application Exh.28 for re-issuance of Commission for measurement and fixation of boundaries with direction to Commissioner to show the actual portion of encroachment in the measurement.
3. Learned counsel for the petitioners submits that the petitioners have instituted the suit for fixation of boundaries and decree of perpetual injunction. In view of the pleadings, the defendants have made encroachment over the suit land and the suit land, which is

part of Gat No.16 is undivided. The parties have purchased the respective area out of the land Gat No.16. Learned counsel submits that in view of order passed below Exh.5 the commission was issued and the measurement of land Gat No. 16 was carried out. The T.I.L.R. has also submitted report alongwith the measurement map. Learned counsel submits that though the T.I.L.R. was directed to measure the land Gat No. 16 to show encroachment alongwith the report, the T.I.L.R. has failed to fix the boundaries and as such, the report submitted by the T.I.L.R. before the court is of no use. Consequently, the petitioners constrained to file application Exh.28 which is erroneously rejected by the trial court.

4. Learned counsel for the respondents-original defendants submits that pursuant to the order passed below Exh.5, the T.I.L.R. has carried out the measurement and also submitted his report alongwith the map. Learned counsel submits that the T.I.L.R. has shown actual possession of the parties over the portion of land Gat No.16 and on the other hands, it appears from the report submitted by the T.I.L.R. that the petitioners/plaintiffs are in possession of excess area. Learned counsel submits that the petitioners have therefore, filed application Exh.28 with some ulterior motive. The T.I.L.R. is yet to be examined before the court. The T.I.L.R. has submitted report alongwith the map as directed by the court in the

order passed below Exh.5 dated 22.4.2014. There is no substance in this writ petition.

5. On careful perusal of order passed below Exh.5, it appears that the trial court has directed the T.I.L.R. Shirampur to measure the entire land Gat No.16 and to show encroachment, if any, alongwith the map. Pursuant to the said direction, the T.I.L.R. has carried out measurement and submitted report alongwith the map. As observed by the trial court, in the said map, the T.I.L.R. has shown the area in actual possession of the parties and also shown original boundary marks. The trial court has therefore, observed that the inference can be drawn about encroachment, if any, to resolve the controversy between the parties. I do not find any justifiable reason to appoint the Court Commissioner to measure the land Gat No.16 again. I do not find any fault in the impugned order. There is no substance in the writ petition. Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

rlj/