

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8638 OF 2014

PANDURANG DATTA KASLE AND OTHERS
VERSUS
MADHUKAR SADASHIV KADAM AND ANOTHER

...

Advocate for the Petitioners : Shri Gunale V.D..
Advocate for Respondents 1 and 2 : Shri Patil Jayant R..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th December, 2017

Per Court:

1 The Petitioners, who are the original Defendants, by this petition, seek to challenge the order dated 30.07.2014 passed by the Trial Court, by which, the application Exhibit-89 filed by the Petitioners seeking appointment of a court commissioner for measurement of the land of the Plaintiffs, has been rejected only for the reason that an application was filed earlier for the same purpose.

2 I have heard the learned Advocates for the respective sides at length.

3 With the assistance of the learned Advocates, I have gone through the application Exhibit-64 filed by the Defendants on 20.03.2010 praying for appointment of a court commissioner. By order dated

03.03.2011, the application Exhibit-64 was rejected. Writ Petition No.3050/2011 filed by the Defendants was rejected by this Court by order dated 21.04.2011.

4 Exhibit 89 preferred by the Defendants indicates that they have specifically prayed that the land of the Plaintiffs be measured through the Taluka Inspector of Land Records (TILR) and the Defendants are willing to pay the charges for such measurement.

5 It is settled law that if there is any dispute with regard to the boundaries or encroachment or of disturbing the boundaries or any contention of any of the litigating sides disputing the boundaries mentioned in the plaint or in the written statement, a joint measurement of the properties of the litigating sides is to be ordered so as to ensure that the ends of justice are met. This Court has delivered catena of judgments directing the joint measurement of the suit properties as well as the properties of the Defendants.

6 It is apparent that the Trial Court has rejected Exhibit-89 only on the ground that Exhibit-64 was earlier rejected and as such, the second application for the same purpose cannot be filed. I find that the application Exhibit-64 was for seeking appointment of a court commissioner for considering certain objections and disputes, which were put forth in paragraph 3 of Exhibit-64. The issue as regards the disputed Bandh, agricultural equipments, pots, cattle shed, electric box, PVC pipe,

etc. was sought to be inspected by the appointment of a court commissioner. Exhibit 89, prima facie, does not appear to be an application in which, the prayer made in Exhibit-64 has been repeated.

7 The learned Advocate for the Plaintiffs, therefore, submits that in the light of the above stated situation, Exhibit-89 can be considered by the Trial Court afresh on it's own merits..

8 Considering the above, this Writ Petition is partly allowed. The impugned order dated 30.07.2014 is quashed and set aside. Exhibit-89 is restored to the file of the Trial Court in RCS No.165/2007.

9 Needless to state, the Trial Court shall decide the said application Exhibit-89 expeditiously and by considering the law applicable.

kps

(RAVINDRA V. GHUGE, J.)