

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11159 OF 2015

Balasaheb s/o Baburao Shinde,
age: 50 years, Occ: service,
R/o Prakashnagar, Latur,
Tq. & District Latur.

Petitioner

Versus

Shaikh Naimuddin s/o Mainuddin
Maniyar Saheb,
age: 65 years, Occ: Business,
R/o Shahavali Mohalla,
(Bodha Nagar), Latur,
Tq. & District Latur.

Respondents

Mr.C.R.Deshpande, advocate for the petitioner
Mr.D.P.Deshpande, advocate for the Respondent.

CORAM : S.B.SHUKRE, J.

DATE : 30th January, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 This petition challenges legality and correctness of the order dated 02.07.2015, passed below application at Exhibit-89. By this order, the trial Court has allowed re-measurement of the piece of land, which is plot no.47, S.No.52/1/A.

3 According to learned Counsel for the petitioner, such an order could not have been passed, as, earlier the trial Court had granted application of the Respondent – original plaintiff to appoint

the Court Commissioner for carrying out measurement of the disputed property and that when during the course of evidence, it became clear that the measurement was carried out with material defects, an attempt made by the respondent to fill up lacuna in the measurement has been made successful by the trial Court by granting re-measurement of the disputed land vide the impugned order.

4 The argument, as rightly submitted by the learned Counsel for Respondent, is fallacious. In the cross examination of Respondent's witness (P.W.-2), the T.I.L.R., who measured the plot in question, some admissions were given and they show that the measurement was done in the absence of the petitioner. This was the material defect attributable to what was done by P.W.2 and not by the plaintiff and, therefore, there is no question of the Respondent being allowed to fill up lacuna in the evidence. After all, the suit has been filed for removal of encroachment and in such a suit, without disputed land being measured, no proper adjudication is possible. Therefore, the impugned order cannot be said to be illegal or perverse.

5 In the result, writ petition is dismissed with costs. Rule discharged.

S.B.SHUKRE
JUDGE

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