

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12741 OF 2016

DASHRATH DHARMA PATIL
VERSUS
ANIL ABA PATIL

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Advocate for Petitioner : Shri Deshpande Ajay S.
Advocate for Respondent : Shri Syed A.R.
h/f Shri Brahme Shailesh P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 27, 2017

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PER COURT :-

1. The petitioner / defendant is aggrieved by the order dated 16.7.2016, by which, the trial Court has allowed application Exhibit 12 and has directed the appointment of a Taluka Inspector of Land Records ("TILR") for conducting the joint measurement of the agricultural land Gut Nos.698 and 699 and has further directed the fixing of the boundaries.

2. This matter was heard at length on 24.7.2017 and again today.

3. The grievance of the petitioner / defendant is that when the respondent / plaintiff preferred RCS No.277 of 2014, it was on the basis of the land that was earlier measured by TILR. Such

measurement and the map indicating some encroachment by the defendant, was the foundation of the suit. Once there already was a measurement and that too by the TILR, there was no reason for the plaintiff to once again tender Exhibit 12 seeking appointment of a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure (“CPC”).

4. The issues were cast in March 2016 and Exhibit 12, which was filed along with the plaint was decided thereafter.

5. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the judgment cited. Learned counsel for the plaintiff makes a statement on instructions that since the impugned order has already been implemented, the plaintiff would not rely upon the measurement carried out by the TILR, prior to the filing of the suit and would also not rely upon the map submitted by the TILR. In short, he would not bank upon the earlier measurement and the map.

6. It is trite law that normally a second Court Commissioner for measurement of the suit properties is not to be appointed. In the event of the earlier measurement or the Court

Commissioner's report is held to be unreliable or bad in law, while recording of the oral evidence, the trial Court may itself exercise its jurisdiction under Section 75 read with Order XXVI Rule 9 of the CPC. So also, a litigating side should also resort to the said provisions for appointment of a Court Commissioner.

7. It is also settled law that when there is a dispute as regards the boundaries / encroachment / identifying the boundary marks, a joint measurement of the properties of the plaintiffs as well as the defendants, inclusive of the suit land is advisable and appropriate as it would assist the Court in having proper boundaries and map thereto before it. Time and again, this Court as well as the Honourable Apex Court has held that a joint measurement is always in the interest of both the sides.

8. In the instant case, reverting to the facts recorded above, it is clear that the TILR has measured the land of the plaintiff, though there is no report submitted, a map is also with reference to the land of the plaintiff. In a dispute of encroachment and especially when the plaintiff is now not relying upon the earlier measurement and the map and would restrict himself to the Court Commissioner's report pursuant to the impugned order, I am of the view that the impugned order would not cause gross

injustice to the petitioner / defendant. Considering the law laid down by the Honourable Apex Court in the cases of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447], and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682], as the impugned order would not cause gross injustice to the defendant, I do not deem it appropriate to cause an interference in the impugned order. This petition is devoid of merits and stands dismissed.

9. Needless to state, the statement made by the plaintiff, as recorded above will be a statement made to this Court.

(RAVINDRA V. GHUGE, J.)

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