

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9888 OF 2013

SHIVAJI GANPATI KALE AND OTHERS
VERSUS
DHONDIRAM NAMA DIKALE

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Advocate for Petitioners : Shri B.R.Sontakke
Advocate for Respondent : Shri Mayur Salunke
h/f Shri V. D. Salunke

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 21, 2017

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PER COURT :-

1. Heard the learned Advocates for the petitioners and the respondent.
2. This Court by order dated 6.12.2013 has stayed RCS No. 166 of 2009, pending before the trial Court.
3. On 11.3.2014, the petitioner sought an adjournment. On 25.2.2014, this Court granted a last chance to the petitioners, who had sought an adjournment. On 2.5.2014, none appeared for the petitioners.
4. Shri Salunke, learned Advocate for the respondent /

original plaintiff submits that the petitioners have been seeking adjournments and the matter has been adjourned, only because the suit filed by the respondent has been stayed. He opposes an adjournment today. I have heard the learned Advocates for the parties.

5. The petitioners are aggrieved by the order dated 19.10.2013, passed by the trial Court, by which, the Taluka Inspector of Land Records (TILR) has been appointed as a Court Commissioner for measuring the suit land as well as the land of the defendants, Gut Nos. 78 and 79, so as to ensure that the boundaries are identified and the said exercise would assist the trial Court.

6. The suit preferred by the respondent is for declaration of ownership and injunction.

7. The grievance of the petitioners is that when final arguments were advanced, application Exhibit 141 was filed by the respondent / plaintiff. The trial Court should not have entertained the said application since a Cadestral Surveyor had earlier measured Gut No.78.

8. It appears from the record that it is a dispute as regards the boundaries and keeping in view that the land Gut No.79 is owned by the petitioners / defendants, the trial Court was of the view that a joint measurement of the lands of the litigating sides would make the picture clear and would assist the Court.

9. This Court has consistently taken such a view in the matters of Kashinath Chindhuji Shastri Vs. Haribhau Nathuji Bawanthade [2006 (Supp.) Bom. C.R. 1018] and Shyam Janardan Chaoudary Vs. Asha Ramdas Katkar and another [2014 (6) Bom. C.R. 576], that it is always in the interest of justice that joint measurement of the properties of the litigating sides would give a clear picture. It is undisputed that the Cadestral Surveyor has measured Gut No.78 alone and Gut No.79 belonging to the defendants was never measured.

10. Considering the above and keeping in view the law settled by this Court, I do not find that the impugned order can be termed as being perverse or erroneous. Merely because a second view is possible, it would not warrant interference in the impugned order.

11. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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